bill, for preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

Also, petition of citizens of Barry and Eaton Counties, Mich., favoring the passage of the McLean bill, granting Federal protection to all migratory birds; to the Committee on Agriculture.

By Mr. KINDRED: Petition of the Ford Motor Co., Detroit, Mich., and John Burroughs, New York, favoring the passage of the McLean bill, granting Federal protection to all migratory birds; to the Committee on Agriculture.

Also, petition of the Public Service Commission, second district, Albany, N. Y., favoring the passage of Senate bill 6099, authorizing the Interstate Commerce Commission to prescribe a uniform classification of freight; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Waterbury Felt Co., of Skaneateles, N. Y., and Rice & Adams, of Buffalo, N. Y., favoring the passage of the Weeks bill (H. R. 27567) for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of the Brainerd Manufacturing Co., East Rochester, N. Y., favoring the passage of House bill 27567, for a 1-cent letter-postage rate; to the Committee on the Post Office and Post Roads.

By Mr. KINKEAD of New Jersey: Petition of the common council of the city of Hoboken, favoring the passage of legislation granting pension to letter carriers who have grown old in the service; to the Committee on Pensions.

By Mr. LINDSAY: Petition of Ernest Thompson Seton, Greenwich, Conn., favoring the passage of the McLean bill granting Federal protection to all migratory birds; to the Committee on Agriculture.

Also, petition of the American Forestry Association, Washington, D. C., protesting against the passage of the Senate amendment to House bill 23293, relative to the protection of the water supply of the city of Colorado Springs and the town of Manitou, Colo.; to the Committee on the Public Lands.

Also, petition of Ernest T. Seton, of Greenwich, Conn., favoring the passage of the McLean bill for protection of migratory birds; to the Committee on Agriculture.

By Mr. MOTT: Petition of the Dentist Supply Co., New York, favoring the passage of the amendment to the pharmacy law of the District of Columbia to regulate the sale of poisons and the practice of pharmacy; to the Committee on the District of Columbia.

Also, petition of the California Club of San Francisco, Cal., favoring the passage of legislation making sufficient appropriations for the suppression of the white-slave traffic; to the Committee on Appropriations.

By Mr. PAYNE: Petition of 75 citizens of Palmyra, N. Y., favoring the passage of the Kenyon-McCumber bill, for the preventing of the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. PORTER: Petition of sundry citizens of Ensworth, Avalon, Ben Avon, and Pittsburgh, Pa., and sundry citizens of the twenty-ninth congressional district, Pittsburgh, Pa., favoring the passage of the McLean bill granting Federal protection to all migratory birds; to the Committee on Agriculture.

By Mr. RAKER: Petition of 500 citizens of Humboldt County, Cal., circulated by the club women of Humboldt County, favoring the passage of legislation for the establishment of a redwood national park; to the Committee on Agriculture.

Also, petition of the California Club of California Women, favoring the passage of legislation making an increase of appropriation for the suppression of the white-slave traffic; to the Committee on Appropriations.

Also, petition of the Western Forestry and Conservation Association, favoring an additional appropriation enabling Federal cooperation with the States in the protection of forested watersheds from fire; to the Committee on Agriculture.

Also, petition of Coffin Redington Co., San Francisco, Cal., protesting against the passage of any legislation for the reduction of tariff on chemicals; to the Committee on Ways and Means.

By Mr. ROTHERMEL: Petition of John Butlin Rothermel and other members of the Conrad Weiser Society, Children of the American Revolution, of Reading, Pa., favoring the passage of the McLean bill granting Federal protection to all migratory birds; to the Committee on Agriculture.

By Mr. SCULLY: Petition of the California Club of San Francisco, Cal., favoring the passage of legislation making sufficient appropriations for the suppression of the white-slave traffic; to the Committee on Appropriations.

By Mr. SMITH of Michigan: Memorial of the First Methodist Episcopal Church, Albion, Mich., favoring the passage of the Kenyon-Sheppard bill preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. SPARKMAN: Petition of Mrs. H. B. Morse and others, favoring the passage of the Jones-Works bill for limiting the number of saloons in the District of Columbia; to the Committee on the District of Columbia.

By Mr. WEEKS: Petition of the Men's Class, First Baptist Church, Watertown, Mass., favoring the passage of the Kenyon-Sheppard bill preventing the shipment of liquor into dry territory; to the Committee on the Judiciary.

By Mr. WILSON of New York: Petition of the American Flint Glass Workers' Union, Brooklyn, N. Y., and Local Union No. 69, of the American Flint and Glass Workers' Union, Woodhaven, N. Y., protesting against the passage of legislation for the reduction of tariff on imported glass wares; to the Committee on Ways and Means.

SENATE.

FRIDAY, *February 7, 1913.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

Mr. BACON took the chair as President pro tempore under the previous order of the Senate.

The Journal of yesterday's proceedings was read and approved.

RAILROADS IN ALASKA (H. DOC. NO. 1346).

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was read and referred to the Committee on Territories and ordered to be printed:

To the Senate and House of Representatives:

In accordance with the provisions of section 18 of an act of Congress (Public, No. 334) approved August 24, 1912, I appointed a commission—

to conduct an examination into the transportation question in the Territory of Alaska; to examine railroad routes from the seaboard to the coal fields and to the interior and navigable waterways; to secure surveys and other information with respect to railroads, including cost of construction and operation; to obtain information in respect to the coal fields and their proximity to railroad routes; and to make report of the facts to Congress on or before the 1st day of December, 1912, or as soon thereafter as may be practicable, together with their conclusions and recommendations in respect to the best and most available routes for railroads in Alaska which will develop the country and the resources thereof for the use of the people of the United States.

Under the requirements of the act, this commission consisted of—

an officer of the Engineer Corps of the United States Army, a geologist in charge of Alaska surveys, an officer in the Engineer Corps of the United States Navy, and a civil engineer who has had practical experience in railroad construction and has not been connected with any railroad enterprise in said Territory.

The date when the act was passed was late in the summer season, thus allowing a very limited time for the preparation of a report for presentation at the present session of Congress. Nevertheless, within a week after the act was approved the commission had been appointed, as follows:

Maj. Jay J. Morrow, Corps of Engineers, United States Army, chairman.

Alfred H. Brooks, geologist in charge of Division of Alaskan Mineral Resources, Geological Survey, vice chairman.

Civil Engineer Leonard M. Cox, United States Navy.

Colin M. Ingersoll, consulting railroad engineer, New York City.

This commission has transmitted to me a report, which is herewith submitted to Congress in accordance with the provisions of the act. An examination of this report discloses that the following are among the more important of the findings of the commission:

The Territory of Alaska contains large undeveloped mineral resources, extensive tracts of agricultural and grazing lands, and the climate of a large part of the Territory is favorable to permanent settlement and industrial development. The report contains much specific information and many interesting details with regard to these resources. It finds that they can be developed and utilized only by the construction of railways which shall connect tidewater on the Pacific Ocean with the two great inland waterways, the Yukon and the Kuskokwim Rivers. The resources of the inland region and especially of these great river basins are almost undeveloped because of lack of transportation facilities. The Yukon and Kuskokwim Rivers system include some 5,000 miles of navigable water, but these are open to commerce only about three months in the year. Moreover, the mouths of these two rivers on Bering Sea lie some 2,500 miles from Puget Sound, thus involving a long and circuitous route from the Pacific Coast States. The transportation of freight to the mouths of these rivers and thence upstream will always be so expensive and confined to

so limited a season as to forbid any large industrial advancement for the great inland region now entirely dependent on these circuitous avenues of approach.

From these considerations the commission finds that railway connections with open ports on the Pacific are not only justified, but imperative if the fertile regions of inland Alaska and its mineral resources are to be utilized; but that with such railway connections a large region will be opened up to the homesteader, the prospector, and the miner. So far as the limited time available has permitted the commission has investigated, and in its report describes all of the railway routes which have been suggested for reaching the interior, including the ocean terminals of these routes. The relative advantages and disadvantages of these routes are compared. The principal result of this comparison may be stated to be that railroad development in Alaska should proceed first by means of two independent railroad systems, hereafter to be connected and supplemented as may be justified by future development. One of these lines should connect the valley of the Yukon and its tributary, the Tanana, with tidewater; and the other should be devoted to the development and needs of the Kuskokwim and the Susitna.

The best available route for the first railway system is that which leads from Cordova by way of Chitina to Fairbanks; and the best available route for the second is that which leads from Seward around Cook Inlet to the Iditarod. The first should be connected with the Bering coal field and the second with the Matanuska coal field. Other routes and terminals are discussed, but are found not to have the importance or availability for the development of the Territory possessed by the two mentioned. Thus, the route extending inland from Haines, in southeastern Alaska, has value for local development, though chiefly on the Canadian side of the boundary, but the distance to Fairbanks is found to be too great to permit of its being used as a trunk line to the Yukon waters. The route from Iliamna Bay also has value for local use, but is too far to the southwest to permit of its use as a trunk line into the interior. The proposed terminals at Katalla and Controller Bay are found to be very expensive both as to construction and maintenance, besides furnishing very inferior harbors. The route inland from Valdez is at a disadvantage because it would not serve any of the coal fields, although as hereafter noted Valdez is regarded by the commission as an important alternative terminal in the possible future development of the Chitina-Fairbanks route.

The investigations of the commission indicate that the route from Cordova by way of Chitina to Fairbanks would furnish the best trunk line to the Yukon and Tanana waters: (1) Because Cordova has distinct advantages as a harbor; (2) because this route requires the shortest actual amount of construction, but chiefly (3) because the better grades possible on this route should give the lowest freight rates into the Tanana Valley. The Copper River & Northwestern Railroad is now constructed from Cordova to Chitina and thence up the Chitina River. The commission recommends the building of a railway from Chitina to Fairbanks, 313 miles, estimated to cost $13,971,000, with the provision that if this railway is built by other interests than those controlling the Copper River & Northwestern Railroad, and if an equitable traffic arrangement can not be made with it, connection should be made with Valdez by the Thompson Pass route, 101 miles, estimated to cost $6,101,479.

The commission finds that Cordova offers the best present ocean terminal for the Bering River coal. The commission also points out that it would not be economical to haul the Matanuska coal to either Valdez or Cordova, and that therefore the logical outlet for that field is Seward. If commercial development of these two fields should disclose that the quality of the coal is the same in both, the Bering River field would have the advantage of greater proximity to open tidewater. A branch line from the Copper River Railway to the Bering River field, a distance of 38 miles, at an estimated cost of $2,054,000, is recommended to afford an outlet for the coal on Prince William Sound and into the Copper River Valley and the region where there is at present the largest market for Alaska coal.

The commission finds that a railway from Chitina to Fairbanks will not solve the transportation problem of Alaska, because it will not give access to the Matanuska coal field, the fertile lands and mineral wealth of the lower Susitna, or the great Kuskokwim basin. This province properly belongs to an independent railway system based on the harbor at Seward. The commission recommends a railway from Kern Creek, the present inland terminal of the Alaska Northern Railway, to the Susitna River (distance, 115 miles; estimated cost, $5,209,000), with a branch line to the Matanuska coal field (distance, 38 miles; estimated cost, $1,618,000), and an extension of the main line through the Alaska Range to the Kuskokwim River (distance, 229 miles; estimated cost, $12,760,000).

The entire railways thus recommended will constitute two independent systems involving 733 miles of new construction at a cost of $35,000,000. Eventually these systems will be tied together and there will be earlier demands for branch and local lines as the country develops. One of these systems will find an outlet to the coast over the Copper River & Northwestern Railroad; the other over the Alaska Northern. If these new lines are constructed by others than those financially interested in these two railroads respectively, satisfactory traffic arrangements would have to be made with them. If the new railways recommended should be constructed by the Government, the question is necessarily presented as to whether the Government should acquire the whole or any part of the existing lines, or either of them, or should endeavor to make appropriate traffic agreements. Much would depend upon whether the Government would operate its own railroads or would make operating agreements with those operating existing lines. The commission has not discussed these questions for the reason pointed out in its report that the act of Congress omits questions of this sort from those upon which the commission was instructed to report.

The report of the commission contains the following statement:

> Its instructions from Congress do not contemplate that any recommendation should be made as to how railroads in Alaska should be constructed, i. e., by private corporate ownership or by one of the many forms in use whereby Government assistance is rendered. The commission disavows any intention of making such recommendations, believing that Congress, in its wisdom, desired to reserve to itself the solution of that problem; but it has been impossible to form any estimates of costs of operation without some assumption as to the interest rate on the capital required for construction. This interest rate would obviously differ in two cases—construction by Government or bond guaranty, and construction by private capital. Moreover, were construction carried on by private capital unassisted, the necessity of earning sufficient income to pay operating expenses and interest on bonded indebtedness might make it the duty of the directors of the corporation to impose rates on traffic that would seriously retard the development which the Territory so greatly needs.
>
> The commission has therefore been forced to base its studies upon two hypotheses, viz: That the capital necessary for construction is obtained at 6 per cent interest, assumed as possible if construction is carried out by private corporate ownership unassisted; and that capital is obtained at 3 per cent interest, assumed as possible if the construction is done either by the Government itself or by private capital with bonded indebtedness guaranteed both as to principal and interest.

On similar grounds the commission did not feel justified in discussing the use of the Panama Canal machinery and equipment or in including in its estimates the effect of such use; but a list of the machinery and equipment available at Panama is given in an appendix.

Upon the assumption that the railroad from Chitina to Fairbanks is built by private capital, eliminating promotion profit, but assuming the necessity of earning 6 per cent on the capital invested, it is the judgment of the commission that on estimated available traffic the road could be operated from Cordova to Fairbanks without loss at a passenger rate of 7 cents per mile and an average freight rate of 8 cents per ton-mile. This would mean a through freight rate of $36.94 per ton from Cordova to Fairbanks and a through passenger rate of $31.15. It is the opinion of the commission that—

> an average freight rate exceeding 5 cents per ton-mile and passenger rate in excess of 6 cents per mile would defeat the immediate object of the railroad, namely, the expeditious development of the interior of Alaska, and, furthermore, would introduce the question as to whether or not the Seattle-Cordova-Fairbanks freight route would be able to compete with the present all-water route via the Yukon River system, except on shipments in which the time element is of such importance as to warrant the payment of a higher freight rate.

To meet the requirements of expeditious development and water competition the estimate of the commission involves a through freight rate from Cordova to Fairbanks at $22.25 per ton, and a through passenger rate of $26.70. The report further says:

> Were the road to be constructed by the Government, or by private corporate ownership with a Government guaranty of principal and interest on bonded indebtedness, the capital required should be obtained at a much lower rate of interest, thus materially reducing the annual expenditures.

Using 3 per cent on the investment as fixed charges, and omitting mileage tax of $100, on the assumption that this tax would not be levied in the case of a Government owned or aided road, the commission estimates that the road would pay on the basis of a passenger rate of 6 cents per mile and a freight rate of 5.49 cents per ton-mile, making the average through freight rate from Cordova to Fairbanks $24.43 per ton and the through passenger rate $26.70. I give these figures as illustrations. The report contains similar estimates of freight and passenger

rates and traffic for the road recommended from Seward to the Kuskokwim.

After recommending the construction of the two principal systems and their extensions already mentioned, the commission states in conclusion that it—

is unanimously of the opinion that this development should be undertaken at once, and prosecuted with vigor; that it can not be accomplished without providing the railroads herein recommended under some system which will insure low transportation charges and the consequent rapid settlement of this new land and the utilization of its great resources.

The necessary inference from the entire report is that in the judgment of the commission its recommendations can certainly be carried out only if the Government builds or guarantees the construction cost of the railroads recommended. If the Government is to guarantee the principal and interest of the construction bonds, it seems clear that it should own the roads, the cost of which it really pays. This is true whether the Government itself should operate the roads or should provide for their operation by lease or operating agreement. I am very much opposed to Government operation, but I believe that Government ownership with private operation under lease is the proper solution of the difficulties here presented.

I urge the prompt and earnest consideration of this report and its recommendations.

WM. H. TAFT.

THE WHITE HOUSE, *February 6, 1913.*

MISSISSIPPI RIVER BRIDGES AT MINNEAPOLIS, MINN.

The PRESIDENT pro tempore. The Chair lays before the Senate sundry bills from the House of Representatives.

The bill (H. R. 27986) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., was read the first time by its title.

Mr. NELSON. I ask unanimous consent for the present consideration of the bill. There is a similar Senate bill on the calendar.

There being no objection, the bill was read the second time at length and considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. NELSON. I move that a bill on the same subject upon the calendar, the bill (S. 8249) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., be indefinitely postponed.

The motion was agreed to.

The bill (H. R. 27987) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., was read the first time by its title.

Mr. NELSON. I ask for the present consideration of the bill.

There being no objection, the bill was read the second time at length and considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. NELSON. I move that the bill (S. 8248) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., now on the calendar, be indefinitely postponed.

The motion was agreed to.

The bill (H. R. 27988) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., was read the first time by its title.

Mr. NELSON. I ask for the present consideration of the bill.

There being no objection, the bill was read the second time at length and considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. NELSON. I move that a bill on the calendar upon the same subject, the bill (S. 8251) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., be indefinitely postponed.

The motion was agreed to.

The bill (H. R. 27944) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., was read the first time by its title.

Mr. NELSON. I ask for the present consideration of the bill.

There being no objection, the bill was read the second time at length and considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

Mr. NELSON. I move that the bill (S. 8250) to extend the time for constructing a bridge across the Mississippi River at Minneapolis, Minn., which is a bill on the same subject, be indefinitely postponed.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had agreed to the amendment of the Senate to the bill (H. R. 21524) for the relief of Frederick H. Ferris.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H. R. 25002) to amend section 73 and section 76 of the act of August 27, 1894.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H. R. 8861) for the relief of the legal representatives of Samuel Schiffer, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 109) authorizing the sale and disposition of the surplus and unallotted lands in the Standing Rock Indian Reservation in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 7160) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 8034) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 23293) for the protection of the water supply of the city of Colorado Springs and the town of Manitou, Colo.; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. FERRIS, Mr. GRAHAM, and Mr. VOLSTEAD managers at the conference on the part of the House.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H. R. 22871) to establish agricultural extension departments in connection with agricultural colleges in the several States receiving the benefits of an act of Congress approved July 2, 1862, and of acts supplementary thereto; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. LAMB, Mr. LEVER, and Mr. HAUGEN managers at the conference on the part of the House.

The message further announced the return to the Senate, in compliance with its request, of the bill (S. 7855) to authorize the Northern Pacific Railway Co. to construct a bridge across the Missouri River in section 36, township 134 north, range 79 west, in the State of North Dakota.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolution, and they were thereupon signed by the President pro tempore:

S. 3225. An act providing when patents shall issue to the purchaser or heirs of certain lands in the State of Oregon;

S. 3952. An act repealing the provision of the Indian appropriation act for the fiscal year ending June 30, 1907, authorizing the sale of a tract of land reserved for a burial ground for the Wyandotte Tribe of Indians in Kansas City, Kans.; and

S. J. Res. 156. Joint resolution to appoint George Gray a member of the Board of Regents of the Smithsonian Institution.

PETITIONS AND MEMORIALS.

Mr. GALLINGER presented a petition of Local Lodge No. 118, Independent Order of Grand Templars, of Center Conway, N. H., and a petition of the Minnesota Avenue Improvement Association of the District of Columbia, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented the petition of Rev. W. J. Tucker, D. D., of Hanover, N. H., praying for the enactment of legislation regulating the hours of employment of women in the District of Columbia, which was referred to the Committee on the District of Columbia.

He also presented a memorial of the Minnesota Avenue Improvement Association of Washington, D. C., remonstrating against an appropriation for the construction of a draw in the bridge across the Eastern Branch of the Potomac River, which was referred to the Committee on Appropriations.

He also presented a petition of the Minnesota Avenue Improvement Association, of the District of Columbia, praying for

the passage of the so-called Kenyon "red-light" injunction bill, which was ordered to lie on the table.

He also presented a petition of sundry citizens of Washington, D. C., praying that an appropriation be made for the grading of Otis Street NE., in the District of Columbia, which was referred to the Committee on Appropriations.

He also presented the petition of H. W. Coffin, of Washington, D. C., praying for the continuance of the so-called half-and-half principle in regard to appropriations for the District of Columbia, which was referred to the Committee on Appropriations.

Mr. WEBB presented resolutions adopted by the Farmers' Educational and Cooperative Union of Clay County, Tenn., favoring the adoption of certain amendments to the parcel-post law, which were referred to the Committee on Post Offices and Post Roads.

He also presented resolutions adopted by John C. Daley Council, No. 3, Independent Order Sons of Jonadab, of Washington, D. C., favoring the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. GRONNA. I present a telegram signed by a number of citizens of my State. It is very brief, and I ask that it lie on the table and be printed in the RECORD.

There being no objection, the telegram was ordered to lie on the table and to be printed in the RECORD, as follows:

FARGO, N. DAK., *February 6, 1913.*

Senator A. J. GRONNA,
Washington, D. C.:

We urge your support for the Kenyon-Webb interstate commerce bill. One of the things that has given our State its enviable position among the States of the Union has been its constitutional prohibition and our laws enforcing it. We believe our Representatives feel as we do and want you to know we are back of you in the support of this bill.

W. J. LANE.
H. A. MERLAND.
W. J. CLAPP.
H. H. WHEELOCK.
A. W. MONAIR.
C. P. STINE.
TAYLOR CRUM.
GEORGE W. CROWE.
A. H. BAKER.

Mr. GRONNA presented a petition of the congregation of the McCabe Methodist Episcopal Church, of Bismarck, N. Dak., and a petition of sundry citizens of Hansboro, N. Dak., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. BRYAN presented resolutions adopted by the Tampa Bay Pilots' Association, of Florida, and a memorial of sundry citizens of Pensacola, Fla., remonstrating against the enactment of legislation to further regulate pilotage and pilots, which were referred to the Committee on Commerce.

Mr. BRADY presented the petition of Charles B. Allen and sundry other citizens of Parma, Idaho, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. MYERS presented petitions of sundry citizens of Roundup, Huntley, Huntley Project, and Manhattan, and of members of the Union Sunday School of Hingham, all in the State of Montana, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. NELSON. I present a resolution adopted by the Legislature of Minnesota, which I ask may be printed in the RECORD and referred to the Committee on Finance.

There being no objection, the resolution was referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

Whereas there is now pending before the Federal Congress an amendment to present banking laws authorizing national banks to loan money upon farm-land mortgages; and
Whereas this would open up a new, substantial, and safe field for the investor, and would tend to make easier money for the development of farm lands in the Northwest, and make for stability rather than weakness in the financial institutions: Therefore be it

Resolved, That we earnestly request our Representatives in Congress to do all in their power to secure the adoption of this amendment.

Mr. KENYON presented a petition of sundry citizens of Adams, Ohio, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. BRISTOW presented a petition of sundry citizens of Auburn, Kans., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. BURTON. I present a joint resolution passed by the legislature of my State setting forth the necessity for construction and appropriation to build levees. I ask that the joint resolution be printed in the RECORD and referred to the Committee on Commerce.

There being no objection, the joint resolution was referred to the Committee on Commerce and ordered to be printed in the RECORD, as follows:

Senate joint resolution 11.

Memorial to Congress for construction and appropriation to build levees.

Whereas the Ohio River is a waterway under the control of the Federal Government; and
Whereas the Congress of the United States makes large appropriations for the improvement of said waterway; and
Whereas the cities, towns, and villages along said waterway are yearly ravaged by the floods; and
Whereas there is a very large loss of property and life by reason of the annual floods; and
Whereas much sickness and disease follow in the wake of these overflows; and
Whereas it is feasible and practicable in nearly every case to protect by means of levees, embankments, or flood walls the cities, towns, and villages from the annual overflows and from the destruction of property; and
Whereas the prevailing conditions along the Ohio River necessitates a system of flood defenses: Therefore be it

Resolved by the Senate and the House of the Eightieth General Assembly of the State of Ohio, That we urge upon Congress of the United States the necessity of the early examination into the feasibility and practicability of the construction of the proper levees, embankments, or flood walls for the protection of the cities, towns, and villages, and that we also urge Congress to make the appropriations for such surveys and examinations. Be it further

Resolved, That the secretary of the state of Ohio is hereby instructed to forthwith transmit certified copies of this resolution to all Ohio Members of the Senate and House of Representatives of Congress of the United States and the Clerks of these respective bodies at Washington, D. C.

C. L. SWAIN,
Speaker of the House of Representatives.
HUGH L. NICHOLS,
President of the Senate.

Adopted, January 30, 1913.

UNITED STATES OF AMERICA, STATE OF OHIO.
Office of the Secretary of State.

I, Charles H. Graves, secretary of state of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original rolls now on file in this office and in my official custody as secretary of state, and found to be true and correct, of a joint resolution adopted by the General Assembly of the State of Ohio on the 30th day of January, A. D. 1913, entitled "Joint-resolution memorial to Congress for construction and appropriation to build levees."

In testimony whereof I have hereunto subscribed my name and caused the great seal of the State of Ohio to be affixed at Columbus, Ohio, this 4th day of February, A. D. 1913.

[SEAL.]

CHAS. H. GRAVES,
Secretary of State.

Mr. BURTON presented a petition of the Ohio Association of Ginseng and Golden Seal Growers, praying that an appropriation be made for the investigation of the so-called ginseng disease, which was referred to the Committee on Agriculture and Forestry.

REPORTS OF COMMITTEES.

Mr. CURTIS, from the Committee on Pensions, submitted a report, accompanied by a bill (S. 8399) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War, and to certain widows and dependent relatives of such soldiers and sailors, the bill being a substitute for the following Senate bills heretofore referred to that committee (S. Rept. 1195):

S. 1810. Leonard C. Wiswell.
S. 1555. Charles M. Gregory.
S. 3397. Frank Lytle.
S. 4704. Margaret R. Birchfield.
S. 5911. Amanda Woodcock.
S. 7321. Luther Thompson.
S. 7614. Fred F. Harris.
S. 7660. August T. Lillich.
S. 7663. Charles F. Miller.
S. 7783. George W. Hale.
S. 7907. Frank A. Hill.
S. 8036. George S. Pauer.
S. 8055. Gilbert J. Jackson.

Mr. CURTIS, from the Committee on Pensions, submitted a report, accompanied by a bill (S. 8400) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, the bill being a substitute for the following Senate bills heretofore referred to that committee (S. Rept. 1196):

S. 130. Charles J. Esty.
S. 713. Mary A. Price.
S. 806. Margaret Staton.
S. 915. Mary M. Hoxie.
S. 1007. Mary J. Bates.
S. 1031. Andrew Jackson.
S. 2273. Cordelia R. Bragg.
S. 2444. Catherine F. Edsall.
S. 2590. Manuel Jay.
S. 2803. Mary E. Harris.
S. 2989. Martha Summerhayes.

S. 3302. Hannah M. Dukes.
S. 3692. Francis E. Stevens.
S. 3739. William Lawson.
S. 3741. Israel Dunlap.
S. 3805. Hattie A. Vaughan.
S. 3999. Loomis Near.
S. 4000. Patie A. Downing.
S. 4083. Matilda Kidney.
S. 4196. Thomas Burk.
S. 4293. James M. P. Brookins.
S. 4703. Henry Thomas.
S. 4968. Samuel Oliver.
S. 5006. John Chambers.
S. 5158. Phebe E. Brittell.
S. 5296. John A. Barnhouse.
S. 5300. Emalina Chapin.
S. 5314. Sarah C. Burdick.
S. 5449. William Spotts.
S. 5498. Elvira J. Morton.
S. 5595. Elizabeth M. Lowe.
S. 5796. William D. Martin.
S. 6378. Albert Schroeder.
S. 6826. Maria C. Faulkner.
S. 6845. William M. Whittaker.
S. 6881. Hiram F. Stover.
S. 6884. Horace A. Hitchcock.
S. 6885. Mary C. Brown.
S. 6890. Enoch Medsker.
S. 6908. Hardy H. Hickman.
S. 7146. Abraham Miller.
S. 7148. Martha J. Curry.
S. 7225. Adam Ross.
S. 7271. William White.
S. 7397. Louisa J. Jackson.
S. 7443. Mary A. Fisher.
S. 7489. Solomon Riddell.
S. 7554. John Bailey.
S. 7584. Philander B. Sargent.
S. 7585. William L. McCormick.
S. 7586. Ivory Phillips.
S. 7654. Ann E. Newport.
S. 7684. Catharine T. Williams.
S. 7766. Martha E. S. Blodgett.
S. 7793. Benjamin F. Jay.
S. 7882. Mary J. Thomas.
S. 7916. Michael Kearns.
S. 7958. Benjamin Wentworth.
S. 8014. George W. Doan.
S. 8019. Nathaniel J. Smith.
S. 8067. George W. Vincent.
S. 8085. Martha Benner.
S. 8102. Edward Hearin.
S. 8107. Minnie A. Piety.
S. 8109. Anna M. Thomas.
S. 8123. Ellen Maher.
S. 8174. James W. New.
S. 8215. William H. Sumption.
S. 8224. Ida E. Carter.
S. 8243. Lavina G. Clark.
S. 8253. Ellen Beam.
S. 8257. Judson P. Adams.
S. 8276. Emily C. Thompson.
S. 8277. Emelia Branner.
S. 8295. Charles Shattuck.
S. 8387. Mary E. Spraberry.

Mr. MARTIN of Virginia, from the Committee on Commerce, to which were referred the following bills, reported them each with amendments and submitted reports thereon:

S. 8089. A bill permitting the building of a railroad bridge across the Yellowstone River from a point on the east bank in section 15 to a point on the west bank in section 16, township 151 north, of range 104 west, of the fifth principal meridian, in McKenzie County, N. Dak. (S. Rept. 1197); and

S. 8090. A bill permitting the building of a railroad bridge across the Missouri River from a point on the east bank in section 14, Mountrail County, N. Dak., to a point on the west bank of said river, in section 15, in McKenzie County, N. Dak., in township 152 north, range 93 west, of the fifth principal meridian (S. Rept. 1198).

OLD EXCHANGE BUILDING, CHARLESTON, S. C.

Mr. SWANSON. From the Committee on Public Buildings and Grounds I report back favorably without amendment the bill (S. 8369) authorizing the Secretary of the Treasury to give to the Order of Daughters of American Revolution the "Old Exchange" building in the city of Charleston, S. C. I call the attention of the senior Senator from South Carolina [Mr. TILLMAN] to the report (S. Rept. 1199).

Mr. TILLMAN. This is a local matter in which our people are deeply concerned, and I ask for the immediate consideration of the bill.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It authorizes the Secretary of the Treasury to convey, by quitclaim deed, the building formerly used for post-office purposes and now known as the "Old Exchange," in the city of Charleston, S. C., to the Order of Daughters of the American Revolution in and of the State of South Carolina, to be held by it as a historical memorial in trust for such use, care, and occupation thereof by the Rebecca Motte Chapter of that order, resident in the city of Charleston, State aforesaid, as the chapter shall in its judgment deem to best subserve the preservation of the colonial building and promote the honorable and patriotic purpose for which the grant is requested.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. STONE (for Mr. REED):

A bill (S. 8401) granting an increase of pension to Sarah Ann Kelly; to the Committee on Pensions.

By Mr. STONE:

A bill (S. 8402) to establish a national aeronautical laboratory; to the Committee on the Library.

By Mr. THOMAS:

A bill (S. 8403) to establish the Rocky Mountain National Park in the State of Colorado, and for other purposes; to the Committee on Public Lands.

A bill (S. 8404) for the relief of Jeanie G. Lyles; to the Committee on Claims.

By Mr. WEBB:

A bill (S. 8405) granting a pension to Susan E. Rinks (with accompanying papers); to the Committee on Pensions.

By Mr. JOHNSON of Maine:

A bill (S. 8406) granting an increase of pension to Mary E. Dow; to the Committee on Pensions.

By Mr. KENYON:

A bill (S. 8407) granting an increase of pension to Cornelia F. Lintleman; and

A bill (S. 8408) granting an increase of pension to Thomas M. McKenry; to the Committee on Pensions.

By Mr. SMOOT:

A bill (S. 8409) to authorize the Secretary of Commerce and Labor to sell certain department publications and to provide for crediting the department's printing allotment with the proceeds; to the Committee on Printing.

By Mr. McCUMBER:

A bill (S. 8410) to authorize the sale of lands contained in the abandoned military reservation of Fort Hancock, near Bismarck, N. Dak. (with accompanying papers); to the Committee on Military Affairs.

By Mr. McLEAN:

A bill (S. 8411) granting an increase of pension to William Morrison (with accompanying papers);

A bill (S. 8412) granting an increase of pension to Emma F. Dimock (with accompanying papers); and

A bill (S. 8413) granting an increase of pension to Harriet A. C. Griggs (with accompanying papers); to the Committee on Pensions.

By Mr. TILLMAN:

A bill (S. 8414) to authorize aids to navigation and other works in the Lighthouse Service, and for other purposes; to the Committee on Appropriations.

By Mr. BRADLEY:

A bill (S. 8415) granting an increase of pension to Jacob H. Gabbard (with accompanying papers); and

A bill (S. 8416) granting an increase of pension to Ward Houchin (with accompanying papers); to the Committee on Pensions.

By Mr. FLETCHER:

A bill (S. 8417) to establish a fish-cultural station in the State of Florida; to the Committee on Fisheries.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. MARTINE of New Jersey submitted an amendment proposing to appropriate $45,000 for improving Absecon Inlet, N. J., etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. NELSON submitted an amendment authorizing the Secretary of War to enter into an agreement with the Municipal Electric Co., of Minnesota, for the purpose of utilizing the hydroelectric power developed by the surplus waters not needed for navigation by the dam described and provided for in House Document No. 741, Sixty-first Congress, second session, etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. BURTON submitted an amendment providing for the construction of levees upon any part of the Ohio River between its mouth at Cairo, Ill., and Pittsburgh, Pa., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. SMITH of Michigan submitted an amendment proposing to appropriate $20,000 for improving the harbor at Arcadia, Mich., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. JOHNSON of Maine submitted an amendment providing for the improvement of Thomaston Harbor, Me., etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. MARTIN of Virginia submitted an amendment proposing to appropriate $5,000,000 for the construction of a memorial bridge across the Potomac River, etc., intended to be proposed by him to the Army appropriation bill, which was referred to the Committee on Military Affairs and ordered to be printed.

Mr. OVERMAN submitted an amendment providing that from March 4, 1913, the salary of the Secretary to the President of the United States shall be $7,500 per annum, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. JONES submitted an amendment proposing to increase the appropriation for improving the Columbia River between Bridgeport and Kettle Falls, Wash., from $25,000 to $40,000, etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

Mr. BRADLEY submitted an amendment providing for the survey of Licking River, Ky., etc., intended to be proposed by him to the river and harbor appropriation bill, which was ordered to be printed and, with the accompanying papers, referred to the Committee on Commerce.

Mr. FLETCHER submitted an amendment proposing to appropriate $25,000 for the establishment of a fish-cultural station in the State of Florida, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. PERCY submitted an amendment relative to the improvement of the Mississippi River from Head of Passes to the mouth of the Ohio River, etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

He also submitted an amendment relative to the improvement of the mouth of the Yazoo River and harbor at Vicksburg, Miss., etc., intended to be proposed by him to the river and harbor appropriation bill, which was referred to the Committee on Commerce and ordered to be printed.

INTERSTATE SHIPMENT OF INTOXICATING LIQUORS.

Mr. HITCHCOCK. I submit an amendment intended to be proposed by me to the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases. I ask that the amendment be read and that it lie on the table and be printed.

There being no objection, the amendment was read and ordered to lie on the table, as follows:

Amendment intended to be proposed by Mr. HITCHCOCK to a bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases.

At the end of section 2 add: "*Provided, however,* That nothing in this act shall be held or construed to render illegal or subject to State control the interstate shipment of liquors or liquids above described into any State or Territory to an individual for his personal or family use."

REVOLUTION IN NICARAGUA.

Mr. SMITH of Michigan submitted the following resolution (S. Res. 454), which was read and referred to the Committee on Foreign Relations:

Whereas during the revolutionary uprising headed by Gen. Louis Mena, which occurred on July 30, 1912, in the Republic of Nicaragua, the armed forces of the United States were landed in Nicaraguan territory; and

Whereas said armed forces of the United States did actually occupy Nicaraguan territory and participate in an armed conflict with the revolutionary forces therein, in which several of the American marines lost their lives; and

Whereas said armed forces of the United States have continued to occupy Nicaraguan territory, exercising military authority thereover, and without the authority of Congress: Therefore

Resolved, That the President of the United States be requested, if not incompatible with the public interest, to send to the Senate such statement of facts and details regarding said occupation and military activity, specifically setting forth the causes which brought about such forcible occupation of the territory of a friendly nation and armed combat with its citizens; and further

Resolved, That the President be requested to inform the Senate whether American marines were placed in possession of the Government buildings or residence of the President of Nicaragua and have continued to occupy such buildings since said revolutionary uprising.

COMMITTEE SERVICE.

Mr. MARTIN of Virginia submitted the following resolution, which was read, considered by unanimous consent, and agreed to:

Resolved, That the following assignments of Senators to service on committees be made, namely:

Mr. MORRIS SHEPPARD, of Texas, to Immigration, Census, Fisheries, and Expenditures in the Department of Commerce and Labor.

Mr. C. S. THOMAS, of Colorado, to Public Lands, Private Land Claims, Indian Depredations, and Expenditures in the Department of the Interior.

Mr. WILLIAMS M. KAVANAUGH, of Arkansas, to Indian Affairs, Industrial Expositions, and National Banks.

Mr. W. R. WEBB, of Tennessee, to Education and Labor and Civil Service and Retrenchment.

COUNTING OF ELECTORAL VOTE.

Mr. DILLINGHAM submitted the following resolution (S. Res. 455), which was read, considered by unanimous consent, and agreed to:

Resolved, That at 10 minutes before 1 o'clock on Wednesday, February 12, 1913, the Senate proceed to the Hall of the House of Representatives to take part in the count of the electoral vote for President and Vice President of the United States.

PROHIBITION OF SMOKING IN THE SENATE CHAMBER.

Mr. TILLMAN. I send to the desk a resolution which I ask be referred to the Committee on Rules.

The resolution (S. Res. 456) was read and referred to the Committee on Rules, as follows:

As required by the standing rules of the Senate (Rule XL), notice is hereby given that I will introduce, Monday, February 10, an amendment to Rule XXXIV, as follows:

"*Resolved*, That Rule XXXIV be amended as follows: Strike out the period at the end of the first clause and insert a semicolon, and then add the following: 'no smoking shall be permitted at any time on the floor of the Senate, or lighted cigars be brought into the Chamber.'"

PANAMA CANAL TOLLS.

Mr. NEWLANDS. On yesterday I introduced a bill (S. 8398) to amend an act entitled "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912, which was read twice by its title and referred to the Committee on Interoceanic Canals. I ask that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

A bill (S. 8398) to amend an act entitled "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone," approved August 24, 1912.

Be it enacted, etc., That section 5 of the Panama Canal act approved August 24, 1912, be, and it is hereby, amended by inserting, after the words "no tolls shall be levied upon vessels engaged in the coastwise trade of the United States," the words "or upon vessels belonging to the United States. The tolls shall not exceed in the aggregate an amount sufficient to pay the United States the cost of operation, maintenance, protection, and a fair interest upon its expenditure in the construction of the canal, after deducting therefrom an amount equal to the tolls which, but for the foregoing provision, would be levied upon vessels engaged in the coastwise trade of the United States and vessels belonging to the United States. For the purpose of making such deduction an account shall be kept of the tonnage of such vessels passing through the canal."

Mr. NEWLANDS. On yesterday I introduced a joint resolution (S. J. Res. 159) regarding the Panama Canal tolls, which was read twice by its title and referred to the Committee on Interoceanic Canals. I ask that the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

Joint resolution (S. J. Res. 159) regarding the Panama Canal tolls.

Resolved, etc., That in providing in the recent act for the opening of the Panama Canal, approved August 24, 1912, that "no tolls shall be levied upon vessels engaged in the coastwise trade of the United States," it was the purpose of Congress to subject the Panama Canal in its purely domestic relations, like all our domestic rivers, canals, and waterways, to the traditional policy of freedom from the imposition of tolls upon vessels engaged in domestic and coastwise transportation for expenditures made by the Government of the United States in their operation, maintenance, improvement, or construction, and that it was not the purpose of the Government of the United States to impose upon foreign and international tonnage any portion of the cost of operation, maintenance, and interest upon the expenditures of the United States

which would be properly assignable to the tonnage of vessels engaged in the coastwise trade.

SEC. 2. That in the opinion of Congress the tolls fixed by the President for the passage of vessels engaged in foreign and international trade through the Panama Canal will not for many years yield such proportion of such cost of operation, maintenance, and interest as would be properly chargeable upon vessels passing through the canal engaged in foreign or international trade were such tolls levied upon all vessels passing through the canal, including those engaged in the coastwise trade of the United States, and therefore such tolls are reasonable and proportionate, and furnish no just ground of complaint to foreign countries.

SEC. 3. That in order to clear up any misapprehension upon this subject and to give assurance of the future, Congress hereby declares the intention of the Government of the United States to fix such tolls for the use of the Panama Canal as will pay to the United States only the cost of operation, maintenance, protection, and a fair interest upon its investment, and that the tolls to be charged against vessels passing through the canal engaged in foreign or international trade shall not exceed in the aggregate such proportion of such cost of operation, maintenance, protection, and interest as the tonnage of such vessels bears to the *total tonnage* of all vessels passing through the Panama Canal.

AGRICULTURAL EXTENSION DEPARTMENTS.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 22871) to establish agricultural extension departments in connection with agricultural colleges in the several States receiving the benefits of an act of Congress approved July 2, 1862, and acts supplementary thereto, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. BURNHAM. I move that the Senate insist upon its amendments, agree to the conference asked for by the House, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the President pro tempore appointed Mr. PAGE, Mr. CRAWFORD, and Mr. SMITH of Georgia conferees on the part of the Senate.

Mr. BURNHAM. Mr. President, I desire to say, in reference to the appointment of the conferees on the part of the Senate on the disagreeing votes of the two Houses on the bill, that my own strong preference was not to serve upon the conference; other Senators who might have been named by reason of priority of rank on the Committee on Agriculture and Forestry were of the same mind, and all are agreed upon the conferees named.

The PRESIDENT pro tempore. The conferees named were suggested by the Senator from New Hampshire [Mr. BURNHAM], and his explanation accounts for their appointment by the Chair.

WATER SUPPLY IN COLORADO.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (H. R. 23293) for the protection of the water supply of the city of Colorado Springs and the town of Manitou, Colo., and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. SMOOT. I move that the Senate insist upon its amendments and grant the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the President pro tempore appointed Mr. SMOOT, Mr. GUGGENHEIM, and Mr. NEWLANDS conferees on the part of the Senate.

COAL MINING IN OKLAHOMA.

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 3843) granting to the coal-mining companies in the State of Oklahoma the right to acquire additional acreage adjoining their mine leases, and for other purposes.

Mr. OWEN. I move that the Senate disagree to the amendments of the House and request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the President pro tempore appointed Mr. GAMBLE, Mr. CLAPP, and Mr. OWEN conferees on the part of the Senate.

SAMUEL SCHIFFER.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives agreeing to the amendment of the Senate to the bill (H. R. 8861) for the relief of the legal representatives of Samuel Schiffer, with an amendment, on page 2, line 8, of the Senate amendment, after "notwithstanding," to insert:

Provided, however, That in no event shall the judgment rendered in said cause, if any, exceed the sum of $62,150.34, and the amount of such judgment, if any, when paid to the claimants, shall be received by them in full settlement and satisfaction of all claims.

Mr. OLIVER. I move that the Senate concur in the amendment of the House to the amendment of the Senate.

The motion was agreed to.

MEMORIAL ADDRESSES ON THE LATE SENATOR HEYBURN.

Mr. BORAH. Mr. President, I desire to give notice that on Saturday, March 1, 1913, after the conclusion of the routine morning business, I shall ask the Senate to consider resolutions commemorative of the character and services of my late colleague, WELDON B. HEYBURN.

MEMORIAL ADDRESSES ON LATE REPRESENTATIVES FROM PENNSYLVANIA.

Mr. OLIVER. Mr. President, I desire to give notice that on Saturday, March 1, I will ask the Senate to consider resolutions commemorative of the lives and public services of HENRY H. BINGHAM, GEORGE W. KIPP, and JOHN G. MCHENRY, late Members of the House of Representatives from the State of Pennsylvania.

PENSIONS AND INCREASE OF PENSIONS.

Mr. McCUMBER submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill S. 7160, an act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and to certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendments numbered 2, 5, and 8.

That the Senate recede from its disagreement to the amendments of the House numbered 1, 3, 4, 6, 7, and 9, and agree to the same.

P. J. MCCUMBER,
HENRY E. BURNHAM,
Managers on the part of the Senate.
JOE J. RUSSELL,
J. A. M. ADAIR,
CHAS. E. FULLER,
Managers on the part of the House.

The report was agreed to.

Mr. McCUMBER submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill S. 8034, an act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and to certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendments numbered 2, 5, 6, 7, 9, and 10.

That the Senate recede from its disagreement to the amendments of the House numbered 1, 3, 4, and 8, and agree to the same.

P. J. MCCUMBER,
HENRY E. BURNHAM,
Managers on the part of the Senate.
JOE J. RUSSELL,
J. A. M. ADAIR,
CHAS. E. FULLER,
Managers on the part of the House.

The report was agreed to.

RIGHT OF WAY IN YELLOWSTONE NATIONAL PARK.

Mr. MYERS. I ask unanimous consent for the immediate consideration of the bill (S. 3130) to authorize the Secretary of the Interior to permit the Conrad-Stanford Co. to use certain lands.

The PRESIDENT pro tempore. The Senator from Montana asks unanimous consent for the present consideration of the bill named by him.

Mr. SMOOT. Mr. President, I observe that the Senator from Kentucky [Mr. PAYNTER] has given notice that he desires to address the Senate immediately after the conclusion of the routine business this morning. I am quite sure that this bill will lead to a lengthy debate, and I therefore object to its present consideration.

Mr. MYERS. Mr. President, I will say that I have no desire whatever to interfere with the Senator from Kentucky. I had, of course, supposed that probably this bill would be considered and voted on in half or three-quarters of an hour——

Mr. SMOOT. It will take a longer time than that, I am quite sure.

Mr. MYERS. But if there is any danger of interfering with the right of the Senator from Kentucky, I shall not now press the bill.

ANTIINJUNCTION LEGISLATION.

Mr. MARTIN of Virginia. Mr. President, on or about the 15th of May, 1912, the House of Representatives passed House bill No. 23635, ordinarily spoken of as the Clayton anti-injunction bill. That bill was referred to the Committee on the Judiciary of the Senate at that time. The committee have proceeded to have some hearings on the bill. On the 1st day of June last I inquired of the chairman of the committee when a report might be expected. While the assurances of the chairman were not very tangible, I did not at that time offer a motion to discharge the committee from the further consideration of the bill, but I did give notice that unless the committee reported that bill to the Senate for its consideration, I would, after a reasonable delay to enable the committee to give full consideration to the bill and to report it, ask that the committee be discharged from its further consideration.

The Senator from New Jersey [Mr. MARTINE] a little later—I think it was on the 12th day of June—made a similar inquiry and received similar latitudinarian suggestions as to the purpose of the committee to not unduly delay a report on the bill; and the matter has continued from that time until this time.

I think, Mr. President, the time has come when it is due to the Senate that the committee should report that bill, so that the Senate may consider it and vote on it; and, unless the chairman of the committee can give me to-day some tangible assurances that we are to have a report and an opportunity to vote on the bill I shall submit a motion to discharge the committee from its further consideration. I ask the chairman of the committee what the Senate may expect in this respect?

Mr. CLARK of Wyoming. Mr. President, I am unable to state what the Senate may expect or does expect, because I am not in the confidence of the expectations of individual Members of the Senate. I will say to the Senator from Virginia, however, that in this particular matter, at least, the Committee on the Judiciary has not been dilatory in the performance of its duty. Whatever delay has occurred in this matter has been delay caused by the friends of the bill, who have sought hearings and have not then appeared. Less than two weeks ago those who were most interested in the bill appeared before the subcommittee and had a considerable hearing. To-morrow is set for a hearing by the subcommittee on the bill.

I have no desire, as chairman of the committee or otherwise, to prevent the Senate from taking any action it pleases. If the Senate chooses to discharge the committee from the further consideration of the bill, I am sure neither the chairman nor any member of the committee will feel in the slightest degree irritated. But I want to assure the Senator that this bill and its companion bill have been receiving due, full, and prompt consideration, and whatever delay has occurred has been largely caused by the failure of the friends of the bill to appear at the times set for hearings at their request. Of course I can give the Senate no assurance as to when the action of the committee may be expected or what it may be.

Mr. MARTIN of Virginia. Mr. President, the Senator starts out by manifesting a little irritability because a very pertinent inquiry is made of him about a bill submitted to a committee of which he is chairman, and disclaiming any knowledge as to what the Senate expects in the matter. I can tell him that I, as one Senator, expect the committee to report that bill.

Mr. CLARK of Wyoming. If the Senator desires the committee to report this bill before it has had the consideration which the friends of the bill themselves insist upon, the Senator knows very well, under the rules, the course which he is at liberty to pursue. I assure the Senator again, as I assured him before, that the chairman of the committee and the subcommittee that has this matter in charge have been working with diligence upon the bill, and have not delayed it with the desire in any respect to prevent the Senate from taking action upon the bill but in order that it might be thoroughly considered, and in view of the repeated requests made for hearings and consideration by those who are friendly to the bill.

I make that statement to the Senator in all good faith, and I hope the Senator will so accept it. At the same time, as chairman of the committee, I do not want to hinder the Senator. I do not want to plead delay. I am perfectly willing, so far as I am individually concerned, that the Senate shall take up this matter at once, through the discharge of the committee, if the Senate believes such action is the best for the expedition of the bill.

Mr. MARTIN of Virginia. Mr. President, I do not think there is anything involved in this bill that requires such protracted hearings. The matters involved in the bill may be considered and acted upon by the Senate without any great array of testimony one way or the other in respect to them. We all know that the committee has the power to bring these hearings to a conclusion. We all know that the committee can require the appearance of those who desire to be heard, and if they do not appear they ought to be cut off from a hearing. We all know that this matter of hearings is a much-resorted-to method of indefinitely postponing measures that ought to be considered in Congress.

I should like to know from the chairman of the committee who it is that desires this hearing which he says will come up in a few days.

Mr. NELSON. Mr. President, the bill was referred to a subcommittee of which the senior Senator from New York [Mr. ROOT] is chairman. I am a member of that subcommittee. The bill came over to the Senate at the close of last session. We had not time to investigate it then. It effects a complete revolution in the law of preliminary injunctions and temporary restraining orders, and also in respect to final injunctions.

The bill went over until this session. We have had several hearings on it. Most of the hearings, I think, have been at the instance of the friends of the bill. I recall very well that Mr. Gompers occupied nearly all the time at two of our hearings.

The Senator from New York is not here. We are to have another hearing to-morrow, when we expect to dispose of the bill, as far as the subcommittee is concerned, and we expect to make some report to the full committee at the next session. This is all I can tell the Senator about it.

The measure is a very important one. As I said, it involves a complete change and an entire revolution in our law relating to what we call temporary restraining orders, preliminary injunctions, and final injunctions. It is a very important matter, because it is so far-reaching in its consequences, and the subcommittee, for which I am speaking, have felt that they ought to give the matter full consideration.

I want further to call the attention of the Senator to the fact that recently the Supreme Court of the United States has issued a new set of equity rules, covering, among other things, this matter of temporary restraining orders, preliminary injunctions, and final injunctions. Those rules, as I say, are new, and we are considering them in connection with this bill, to see whether or not any legislation is required in addition to what is proposed by the new equity rules of the Supreme Court of the United States.

I believe the Senator from Utah [Mr. SUTHERLAND] is a member of the subcommittee with me, and he can speak for himself. I am in the attitude of the Senator from Wyoming; I am speaking only for myself, personally.

I want to add just one word. There is no disposition to delay the matter; but, owing to the great importance of the subject and the character of it, we have felt that we ought not to handle it in a sort of "whangdoodle" manner and throw it before the Senate in a reckless manner and go into it roughshod, as though we were passing an ordinary bill to pension John Jones.

Mr. MARTIN of Virginia. Mr. President, it seems to me time enough has elapsed since the 15th day of last May to enable the committee to handle this matter without handling it—I do not know that I got the word exactly right—in a "whangdoodle" manner. I do not know exactly what the Senator means by a "whangdoodle" manner, but I think the committee ought to handle it in some way. I do not dispute the importance of the bill. The rules adopted by the Supreme Court are simply rules of procedure, and very helpful rules on the general line of the purposes of this bill, but they do not go to the root of the evil aimed at in the bill. I think the bill has had very large consideration already.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Virginia yield to the Senator from Utah?

Mr. MARTIN of Virginia. I yield.

Mr. SUTHERLAND. The Senator from Virginia says the rules of the Supreme Court do not go to the root of the evil. In what respect does the Senator think the pending bill improves the situation over that provided for by the rules of the Supreme Court?

Mr. MARTIN of Virginia. I have not the slightest idea of going into a discussion of the merits of this bill with the Senator from Utah on a preliminary motion like this. It seems to me the disposition to filibuster on that side of the Chamber has gotten out of reasonable limits. The Senator, I am afraid, wants to filibuster against the consideration of this bill. He can not draw me into any such attitude as that.

Mr. SUTHERLAND. The Senator seems to think the rules of the Supreme Court are not sufficient to cover the evil. I have been giving somewhat diligent attention to this whole

question, and I should be glad to hear from the Senator from Virginia in what particular he thinks the rules of the Supreme Court do not cover the evil.

Mr. MARTIN of Virginia. At the proper time, Mr. President, I expect to say something in respect to that matter. But we all know that the Senator from Utah, an able lawyer and a very conservative, if not an ultraconservative Senator in respect to matters of this sort, does not look with very much favor upon this anti-injunction bill.

Mr. SUTHERLAND. The Senator has said that he intended to move to discharge the committee in order that the Senate itself might consider this question. Certainly before he proposes a radical motion of that kind he ought to be able to tell the Senate why he does it.

Mr. MARTIN of Virginia. I do it because the committee has delayed unreasonably its report on a very important bill. I gave that reason once; but I certainly am not called upon to go into a discussion of the merits of a bill when I move to discharge a committee from its consideration.

Mr. SUTHERLAND. The Senator from Minnesota has suggested that in all probability the rules recently adopted by the Supreme Court of the United States cover the situation. As I understand, the Senator from Virginia denies that, and I should be glad to have the Senator from Virginia tell us why he denies it.

Mr. MARTIN of Virginia. I say, I will not delay these proceedings and engage in a filibustering process to prevent a hearing of the matter which I am trying to get before the Senate by responding to any such invitation as that.

Mr. NELSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Virginia yield to the Senator from Minnesota?

Mr. MARTIN of Virginia. I do.

Mr. NELSON. There is one thing, Mr. President, that would tempt me to make rapid progress on this injunction bill, if it would have the effect of checking the other side of the Chamber from preventing the confirmation of nominations.

Mr. MARTIN of Virginia. I am very sorry the Senator from Minnesota wants to cooperate with this side of the Chamber to prevent the confirmation of nominations. This side of the Chamber expects to give due consideration to nominations at the proper time and at the proper place, and to dispose of them as it thinks will best promote the welfare of the country. But that is no part or parcel of a discussion of this motion—this suggestion of a discharge of the committee because of its exceeding great delay in reporting a matter of very great public concern.

Mr. OWEN. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Virginia yield to the Senator from Oklahoma?

Mr. MARTIN of Virginia. I thought the Senator from Wyoming wished to say something; but I yield to the Senator.

Mr. OWEN. I merely wish to inquire how long the committee has had this bill under consideration.

Mr. MARTIN of Virginia. Since the 15th day of last May.

Mr. OWEN. And the extreme haste of the committee is now described as "whangdoodle" haste?

Mr. MARTIN of Virginia. I understood the Senator from Minnesota to say he objected to proceeding with any "whangdoodle" haste in the matter. The Senator from Mississippi [Mr. WILLIAMS], who is an authority on phrases, is not here; and I do not know what the meaning of this phrase "whangdoodle haste" is. But it looks to me as if there has been "whangdoodle" delay, and no haste of any sort whatever, when the bill has been held since the 15th day of last May, and we appear to be as far from a report now as we were then.

This bill has had careful consideration in the House of Representatives, Mr. President. It has had the consideration of one of the great political parties of this country. I think the time has come when the Members of the Senate ought to go on record with respect to it. If they are opposed to the bill, let them give their reasons for it, and record their votes. But I am not going to rest content to see the bill smothered in committee.

This matter of hearings may go on forever. I do not care whether the hearings are being given to so-called friends of the bill or to the opponents of the bill; but what I do insist upon is that the committee shall bring their hearings to an end and that they shall report the bill to the Senate. As I understand, the Senator from Minnesota says that the subcommittee will complete their investigations and reach their conclusions to-morrow.

Mr. NELSON. I meant to say that I hope so. The chairman of the subcommittee is absent, but a meeting is called for to-morrow, and I suppose we will be able to close it then.

There is one thing I want to say to the Senator from Virginia in all Christian spirit, and that is that I think this is a question that we never ought to consider from a party standpoint. It is not a question whether the Democratic Party favors it or whether the Republican Party favors it. It is too big and too broad a question to be a mere naked party question. We ought to consider it divorced from all party considerations, if any question at all is to be considered in that form in this Chamber.

Mr. MARTIN of Virginia. Mr. President, I will say to the Senator from Minnesota that I had not the slightest purpose of making it a political question. But I did say, and I repeat, that the great public importance of this bill and the demand for its prompt consideration are made manifest by the fact that it has been considered in the House of Representatives and has passed that body, and that it has been considered in the national convention of one of the great political parties of this country and has been approved in that convention. I refer to those things not for the purpose of making it a political question, but for the purpose of emphasizing the importance to the country at large, to people of all political parties, that this bill should be reported and should be passed upon by the Senate. If the Members of the Senate do not think the bill ought to be passed, let them say so by a vote recorded in their Journal. If they think the bill ought to be passed, let it be passed.

Mr. BORAH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Virginia yield to the Senator from Idaho?

Mr. MARTIN of Virginia. I yield.

Mr. BORAH. Let us have the Senate say so. Suppose the Senator from Virginia make his motion to have a vote upon this matter.

Mr. MARTIN of Virginia. The Senator from Idaho is showing a very commendable zeal in facilitating this matter. I desired to secure some information about it and to proceed fairly and justly and considerately. As the Senator from Minnesota indicated that perhaps after to-morrow we would have a report, I felt indisposed to insist upon a vote. But I do enter the motion, Mr. President, to discharge the committee from the further consideration of this bill. Such a motion can be carried over for a day by any Senator, and I therefore do not expect to ask a vote on it to-day. But I desire to enter the motion and to say that I shall call it up within the next few days, giving an opportunity for this report to come in which the Senator from Minnesota says may possibly come after to-morrow. If it does not come in two or three days, I shall ask for a vote on my motion.

I enter the motion, and ask that it may lie on the table; and I give notice to the Senate that in a very few days, unless a report is forthcoming, I shall ask a vote of the Senate on that motion.

Mr. BORAH. Do I understand that the Senator has entered that motion?

Mr. MARTIN of Virginia. I have.

Mr. BORAH. I ask for its present consideration.

Mr. LODGE. Mr. President, under the rule it goes over, of course.

Mr. MARTIN of Virginia. I knew there would be objection. I am perfectly willing to have a vote on it now, but I knew it would be carried over.

Mr. CULBERSON. Mr. President, I rise to a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. CULBERSON. The Senator from Massachusetts said the motion went over under the rule. It does not go over unless it is objected to. Who objects?

Mr. LODGE. I asked that it go over, in the absence of the chairman of the subcommittee.

Mr. CULBERSON. Very well.

The PRESIDENT pro tempore. The Chair is informed that there is now a motion pending to that effect.

Mr. LODGE. When I said it went over under the rule, I meant it to go over under the rule, of course.

Mr. CULBERSON. I did not understand the Senator, and I wanted to know who objected.

Mr. LODGE. I objected to its being considered to-day, in the absence of the chairman of the subcommittee.

Mr. CULBERSON. Very well; that is satisfactory.

Mr. MARTIN of Virginia. I ask that my motion may be entered and lie on the table.

The PRESIDENT pro tempore. It will be so ordered.

DEPARTMENT OF LABOR.

Mr. BORAH. I gave notice yesterday that I would ask the Senate to-day to consider the bill (H. R. 22913) to create a department of labor, but in view of the fact that the Senator from Kentucky [Mr. PAYNTER] desires to address the Senate,

and also the Senator from Ohio [Mr. BURTON], I will say that I will attempt to have this bill considered as soon as those Senators shall have concluded their remarks.

SUSPENSION OF STATE STATUTES BY INJUNCTION.

Mr. CRAWFORD. Mr. President, because it is apropos to the discussion which has just occurred, but not with any desire whatever to create any impression that the Committee on the Judiciary has not been doing its full duty in the matter, I desire to call attention to the situation with reference to another pending bill, not so sweeping in its character but nevertheless a bill of very great importance, relating to temporary injunctions issued by Federal courts against the enforcement of statutes enacted by a State, and against the enforcement of orders promulgated by administrative boards of a State.

Last summer, when the bill was pending which made the annual appropriations for legislative, executive, and judicial expenses of the Government, an amendment was offered to that bill by the Senator from Iowa [Mr. CUMMINS] relating to injunctions issued against the Interstate Commerce Commission, and an amendment was offered by me relating to these injunctions against State administrative boards. There was some discussion here, and the amendments were incorporated into that bill and it passed the Senate.

The bill, it will be remembered, was vetoed because of the proposal to repeal the provision for the Court of Commerce. It came back into Congress as a new bill, containing exactly the same amendments, and a second time the bill was passed by both branches of Congress and met with the veto of the President. In the closing days of the session the necessity for passing a supply bill and keeping it strictly within the limits of that purpose made it necessary to drop the suggested amendments.

I introduced a bill some time ago in the present session providing for the same purpose, and I hope that the Senate Committee on the Judiciary will give it early consideration.

I wish to say in this connection, Mr. President, that in my State the use of the power of issuing preliminary injunctions without notice has been scandalously abused by the Federal court. It was one of the subjects dealt with in the annual message of our governor this year and covered several pages. Laws passed the legislature giving the commission the power to fix maximum rates on intrastate business, and they promulgated orders under it, and before papers could be presented to the State courts in the matter, within 15 minutes after the act passed the legislature and met the approval of the governor, by wire a temporary restraining order was made on certain officers of the State to prevent their entering into the execution of these solemn statutes of the State.

I say to Senators, if the present Congress refuses to consider a situation of that kind, you will simply leave it to the Congress that follows to consider it, because whether it is a political question or not I do not believe an American Congress is going to permit a situation of that kind to exist very long, where these inferior Federal courts by telegraph, within 15 minutes after a solemn State statute is enacted, tie up the officers of a State. That was done over two years ago with reference to passenger rates in my State. That proceeding is dragging its slow length along before a referee, and it will be years before the people of the State can have a final judgment on it.

The proceeding has been one of abuse, and you are surprised at this irritation which exists in these States. We have some timber in the Black Hills in the western part of my State. If we had a freight rate that was within the limits of reason the people out on those prairies could get lumber, produced within the limits of our own State, but from the Black Hills to the Missouri River the freight rate on lumber is almost as high as is the rate from the State of Washington to South Dakota, or from Georgia to South Dakota, and it is made practically prohibitory to the people on the prairies east of the Missouri River to use lumber that grows in the western borders of our State because of the extortion of the railways in that State, and because when the legislature has provided relief for the people there, a temporary injunction comes from an inferior Federal court, by telegraph, without any notice to the people of our State.

Now, we can delay and put these matters off and allow the irritation to grow, as it will grow, but I insist that this bill should receive serious consideration and it should not be the victim of undue delay.

INTERSTATE SHIPMENT OF LIQUORS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases.

Mr. PAYNTER. Mr. President, I am not unmindful of the fact, if I desired to act in a manner that would invite and receive popular approval, that I should pursue exactly the opposite course from that which I have marked out for myself with reference to the proposed legislation.

Thousands of good people, God-fearing men and women in Kentucky, are pleading for the enactment of this bill into law; they seek the legislation solely for what they conceive to be for their country's good. No ulterior or selfish motive influences their action. Every right-thinking man would like to have their respect and approval of his official acts. But if one must violate the Constitution which he has sworn to support and maintain, and thus suffer the prostitution and self-abasement consequent upon a violation of that oath, the price which he pays to obtain their approval is too great. When a Member of this body is charged with the duty of construing the Constitution, the question as to the effect his decision may have on his personal fortunes should not for one moment be considered. When such a thought enters his mind he should, with due haste, exclaim, "Get thee behind me, Satan!"

Occasionally I receive a letter from one who knows that I am a strict constructionist, believing that all rights not granted to the Federal Government were reserved by the States and to the people, in which he says that the proposed legislation is good State rights doctrine. What I have always supposed was meant by State rights were such rights as were not granted to the Federal Government. I have never supposed these words meant the usurpation of any of the rights granted to the Federal Government or the right to have redelegated to the States the rights which had been granted to the Federal Government. From another person I received a letter in which the writer says the bill is constitutional because it is right. I received another letter from a gentleman who seems to be one of intelligence, and among other things he said:

> It is probably your opinion that it is unconstitutional, and probably, too, it may be so declared.

Notwithstanding this, he insisted that I should vote for the bill. Of course I could not hope to make an argument against the bill which would in the slightest degree affect the opinions of those who thus reason.

If our dual system of government is to be perpetuated, we must preserve the constitutional authority of the Federal as well as that of the State governments. The Members of both branches of the Congress promise to support the Constitution; they are certainly not supporting that instrument when they attempt to surrender to the States the authority to regulate interstate commerce, when the States without qualification or reservation expressly granted that authority to the Federal Government.

The bill as reported from the committee reads as follows:

> SECTION 1. That the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, including beer, ale or wine, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, enacted in the exercise of the police powers of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited.
>
> SEC. 2. That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundaries of such State or Territory and before delivery to the consignee, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its reserved police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

Section 1 is immature, impracticable, and, if permissible, I would say impossible. The bill is an incoherent and inconsistent piece of patchwork. The prohibition is made to depend upon the intent of some one with an undefined interest in the intoxicating liquor, whether it be a property interest or a lively interest arising from a desire to consume some of it is not stated, and the further fact that the liquor is received or held for sale in dry territory.

The section is not a prohibition against shipping intoxicating liquors. No penalty is prescribed for its violation, and perhaps the reason for this failure is because of what has been reported to have been said by Chief Justice Brian:

> It is trite law that the thought of man is not triable, for even the devil does not know what the thought of man is.

I have not tried to verify the quotation. Whether the Chief Justice made the statement or not, the rule as stated is correct.

Section 2 is inconsistent with section 1, as this section allows intoxicating liquor to be seized upon arrival in a State, regard-

less of the question of intent of those who had a direct or indirect interest in it.

A question which I will simply state, not discuss, might arise in Kentucky growing out of a situation there. Local option, not prohibition, is provided for in the constitution of the State. As a result of a vote in most of the counties local option is in force, and it is unlawful to sell liquor as a beverage. There is a statute in Kentucky by the terms of which it is made unlawful to ship intoxicating liquors, either from within or without the State, into dry territory, although the State and Federal courts have since held the act invalid so far as it was intended to affect an interstate shipment. It is lawful to sell intoxicating liquors in Lexington, Frankfort, Newport, Covington, Louisville, Owensboro, Paducah, and other places. So Kentucky, under her code of laws, makes it lawful to manufacture intoxicating liquors and leave the sale of it optional with certain political subdivisions. Suppose a shipment of intoxicating liquors was made in Pennsylvania to Lexington, Ky., it would have to pass through Kentucky over some routes more than 100 miles, and over the shortest route nearly 100 miles. Under the terms of the bill the liquor could be seized on its arrival in the State and before a delivery to the consignee. I will not stop to speculate as to the question which this statement of facts presents.

In the commercial world and by the Congress intoxicating liquors have been recognized as legitimate articles of commerce; if anything can be clearly determined by adjudication, it is that such liquors are a legitimate subject of commerce. In support of that I cited the case of Leisy *v.* Hardin (135 U. S., 100) and the case of the Louisville & Nashville Railroad Co. *v.* Cook Brewing Co. (223 U. S., 90).

In Leisy against Hardin it was said:

> Ardent spirits, distilled liquors, ale, and beer are subjects of exchange, barter, and traffic, like any other commodity in which a right of traffic exists, and are so recognized by the usages of the commercial world, the laws of Congress, and the decisions of courts.

This question is so well settled I deem it unnecessary to further discuss it.

At this point it may be stated that by section 8, Article I, Constitution of the United States, the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes" is given to Congress.

The purpose of the proposed legislation is to invest the States with authority to prevent the shipment of intoxicating liquors from one State into another by seizing them, by virtue of existing laws or such as may hereafter be enacted, before they reach the consignee, whether such liquors are imported for sale in violation of State laws or for the personal use of the consignee.

If this bill should become a law and is held valid, then no person could have shipped into a dry State or a dry territory in a State liquor for his personal use. Yet no State, so far as I am aware, has declared the use of intoxicating liquors unlawful. In this connection it may be stated that the proposed legislation does not attempt to regulate commerce. On the contrary, it proposes to give to every State the right to prevent an interstate shipment of liquor by giving it the right, under whatever conditions it sees proper to impose, to seize it before delivery, thus giving each State the right to regulate interstate shipments of liquor in whatever way it may choose.

Mr. KENYON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Kentucky yield to the Senator from Iowa?

Mr. PAYNTER. I do.

Mr. KENYON. I do not want to interfere with the orderly course of the Senator's argument, but the statement which the Senator makes that this bill will stop the purchase for personal use of liquor is one that has been made a great deal, and is one that I absolutely deny. I wish the Senator would point out anything in the bill which warrants that assertion. I am willing to be convinced.

Mr. PAYNTER. If the Senator will bear with me in patience, I think I will show that the language of the bill does warrant the statement I have made.

Mr. KENYON. Does the Senator intend to discuss that question?

Mr. PAYNTER. I should like to say in that connection that if the Senator will simply read section 2 of the bill he will find that in express terms it does attempt to authorize a State to interrupt an interstate shipment of liquor when it arrives within its borders for use, consumption, sale, or storage.

Mr. KENYON. I have read section 2 a good many times, and, in my judgment, it does not.

Mr. PAYNTER. If that is true, and the Senator still entertains the opinion he has just stated, it is useless for the Senator and myself to discuss the question. So I would very much prefer, Mr. President, to go along in an orderly way and discuss the subject without going off on some question that I have considered perhaps in some other part of my speech.

Some general propositions may be stated which seem to me do not need the citation of authorities to support them. Some facts may be stated about which there is no controversy. I shall state some of them.

The police power exists in the States as it existed at the time the National Government was created, and it still remains in the States. The National Government can not add to or diminish the police power of the States. There is a limitation between the sovereign power of a State and the Federal power, and it may be stated as follows:

That which does not belong to commerce is within the jurisdiction of the police power of the State, and that which belongs to commerce is within the jurisdiction of the Federal Government.

Liquor can not be manufactured, sold, or used under the protection of the Federal Government in any State that has prohibited it. When the State authorizes the manufacture, sale, or use of liquors, the Congress is without power to destroy such authority.

If the State can determine the subjects which shall be regulated, then its power is greater than that of the Federal Government in the matter of the regulation of commerce between the States.

If such power is conceded to exist in the States, then they must triumph over the Federal Government in the struggle for supremacy.

If the Congress can surrender to the States a power which the Constitution provides it alone shall exercise, then it is competent for the Congress to utterly overthrow the Constitution and subvert all the rights which the framers of it sought to preserve by it.

If a State can enact a law which will enable it to intercept an interstate shipment of goods as it arrives within its borders, then the State, and not the Congress, can regulate interstate commerce.

If a State can intercept and prevent the consignee from receiving goods, then it can regulate interstate commerce and control the commerce which arises in another State, and thus nullify the clause of the Constitution providing that the Congress should regulate interstate commerce, thus destroying that clause of the Constitution which was regarded by those who framed it as essential to the proper conduct of the business of the country—in fact, this was the clause upon which the entire fabric was constructed. This is true because it was well known by those who brought into existence the Constitution that interstate commerce could only be regulated by the Congress, and that chaos would reign in business without it. Without that clause of the Constitution the growth and development of the country would be paralyzed, stagnation would exist, and the energies of the people be destroyed.

One of the great questions that brought the States together for the purpose of making a "more perfect Union" was to free commerce from State discrimination, not to transfer the power of restriction. As the States recognized that such regulation could only be had by national authority, they unreservedly surrendered that question to national sovereignty.

Notwithstanding that sovereignty should alone be exercised in the regulation of commerce, still it is proposed that the Congress shall redelegate such authority to the States. The essence of the proposition is to allow the States to do that which is at least doubtful that the Congress can do, to wit, prohibit the interstate shipment of a legitimate article of commerce.

When the Congress undertakes to authorize a State to seize a legitimate article of commerce before it reaches the consignee the Congress is attempting to redelegate to the State its power to regulate interstate commerce, and to allow the State, in effect, to prohibit the interstate shipment of a legitimate article of commerce. To restate the proposition, the Congress of the United States is in substance attempting to confer an authority upon the States which is not constitutionally vested in itself.

If a carrier can not deliver to a consignee goods which are the subject of an interstate shipment, then we have the equivalent of a denial to one desiring to ship goods of the right to deliver to the carrier goods for shipment.

If the Congress can authorize or permit a State to prevent the delivery of goods to the consignee, then the same right exists in the Congress to authorize or permit a State to prohibit the shipment of goods, although such goods are regarded by the State where situated, by the commercial world, by the Congress, and by the decisions of the courts as legitimate articles of commerce. As already stated, the denial of the right to deliver goods is the exact equivalent to denying the right of shipment, for if the article of commerce can not be delivered to

the consignee, then interstate commerce to that extent is destroyed.

The proposed legislation would have the effect of giving to the laws of the several States extraterritorial operation. That is the necessary consequence of allowing a State law to prohibit interstate shipment of merchandise and would destroy the right to contract beyond the limits of the State for shipment.

The effect of the proposed legislation would be to allow every State to stop every train crossing its borders and discharge its freight, lest it carry within the State prohibited merchandise.

In Rhodes *v.* Iowa (170 U. S., 422) the court said:

Undoubtedly the purpose of the act was to enable the laws of the several States to control the character of merchandise therein enumerated at an earlier date than would have been otherwise the case, but it is equally unquestionable that the act of Congress manifests no purpose to confer upon the States the power to give their statutes an extraterritorial operation, so as to subject persons and property beyond their borders to the restraints of their laws. If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation; for, as held in the Bowman case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate-commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named, covered by the inhibitions of a State statute.

In Rhodes against Iowa, supra, at page 415, the court, in discussing the Bowman case, said:

After great consideration it was held that the law of the State of Iowa, in so far as it affected interstate commerce, was repugnant to the interstate-commerce clause of the Constitution and was void. It was decided that the transportation of merchandise from one State into and across another was interstate commerce, and was protected from the operation of State laws from the moment of shipment whilst in transit and up to the ending of the journey by the delivery of the goods to the consignee at the place to which they were consigned.

In Bowman *v.* Railway Co. (125 U. S., 498, 490), the court said:

It may be said, however, that the right of the State to restrict or prohibit sales of intoxicating liquor within its limits, conceded to exist as a part of its police power, implies the right to prohibit its importation, because the latter is necessary to the effectual exercise of the former. The argument is that a prohibition of the sale can not be made effective, except by preventing the introduction of the subject of the sale; that if its entrance into the State is permitted, the traffic in it can not be suppressed. But the right to prohibit sales, so far as conceded to the States, arises only after the act of transportation has terminated, because the sales which the State may forbid are of things within its jurisdiction. Its power over them does not begin to operate until they are brought within the territorial limits which circumscribe it. It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits, but such extraterritorial powers can not be assumed upon such an implication. On the contrary the nature of the case contradicts their existence, for if they belong to one State they belong to all and can not be exercised severally and independently. The attempt would necessarily produce that conflict and confusion which it was the very purpose of the Constitution by its delegations of national power to prevent.

The Supreme Court also said, in Rhodes *v.* Iowa (170 U. S., 424):

Whilst it is true that the right to sell free from State interference interstate-commerce merchandise was held in Leisy *v.* Hardin to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State.

On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State.

The question involved here was ably discussed by Mr. Justice Catron in the License cases (5 How., 559-561), in which it is said:

The law and the decision apply equally to foreign and to domestic spirits, as they must do on the principles assumed in support of the law. The assumption is that the police power was not touched by the Constitution, but left to the States as the Constitution found it. This is admitted; and wherever a thing from character or condition is of a description to be regulated by that power in the State then the regulation may be made by the State, and Congress can not interfere. But this must always depend on facts, subject to legal ascertainment, so that the injured may have redress. And the fact must find its support in this, whether the prohibited article belongs to and is subject to be regulated as part of foreign commerce or of commerce among the States. If from its nature it does not belong to commerce, or if its condition, from putrescence or other cause, is such when it is about to enter the State that it no longer belongs to commerce, or, in other words, is not a commercial article, then the State power may exclude its introduction. And as an incident to this power a State may use means to ascertain the fact. And here is the limit between the sovereign power of the State and the Federal power; that is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State and that which does belong to commerce is within the jurisdiction of the United States. And to this limit must all the general views come, as I suppose, that were suggested in the reasoning of this court in the cases of Gibbons *v.* Ogden, Brown *v.* The State of Maryland, and New York *v.* Miln.

What, then, is the assumption of the State court? Undoubtedly in effect that the State had the power to declare what should be an article of lawful commerce in the particular State; and having declared that ardent spirits and wines were deleterious to morals and health, they ceased to be commercial commodities there, and that then the police power attached, and consequently the powers of Congress could not interfere. The exclusive State power is made to rest not on the fact of the state or condition of the article, nor that it is property usually passing by sale from hand to hand, but on the declaration found in the State laws and asserted as the State policy that it shall be excluded from commerce. And by this means the sovereign jurisdiction in the State is attempted to be created in a case where it did not previously exist.

If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation, for it takes from Congress and leaves with the States the power to determine the commodities or articles of property which are the subjects of lawful commerce. Commerce may regulate, but the States determine what shall or shall not be regulated.

Upon this theory the power to regulate commerce instead of being paramount over the subject would become subordinate to the State police power, for it is obvious that the power to determine the articles which may be the subjects of commerce, and thus to circumscribe its scope and operation, is in effect the controlling one. The police power would not only be a formidable rival but in a struggle must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated.

The same process of legislation and reasoning adopted by the State and its courts could bring within the police power any article of consumption that a State might wish to exclude, whether it belonged to that which was drank or to food and clothing, and the nearly equal claims to propriety, as malt liquors and the produce of fruits other than grapes stand on no higher grounds than the light wines of this and other countries excluded in effect by the law as it now stands. And it would be only another step to regulate real or supposed extravagance in food and clothing. And in this connection it may be proper to say that the three States whose laws are now before us had in view an entire prohibition from use of spirits and wines of every description, and that their main scope and object is to enforce exclusive temperance as a policy of State, under the belief that such a policy will best subserve the interests of society; and that to this end more than to any other has the sovereign power of these States been exerted, for it was admitted on the argument that no licenses are issued and that exclusion exists, so far as the laws can produce the result—at least in some of the States—and that this was the policy of the law. For these reasons, I think, the case can not depend on the reserved power in the State to regulate its own police.

In re Rahrer (140 U. S., 557) the Supreme Court spoke of the reasoning of Mr. Justice Catron as "sagacious observations," and quoted them with approval, and then said (p. 559):

And the learned judge reached the conclusion that the law of New Hampshire, which particularly raised the question, might be sustained as a regulation of commerce, lawful because not repugnant to any actual exercise of the commercial power by Congress. In respect of this the opposite view has since prevailed, but the argument retains its force in its bearing upon the purview of the police power as not concurrent with and necessarily not superior to the commercial power.

The Committee on the Judiciary of the United States Senate, of which Hon. Philander C. Knox was a member, had under consideration bills somewhat like the one here presented for our consideration, and in discussing them the committee, through Mr. Knox, said:

These bills propose a plan to prevent the use of liquor through a regulation of interstate commerce by States that have no power over such commerce, permitted to do so by a Nation that has no jurisdiction over such use.

The Nation is not asked to supplement any action of the States prohibiting the use of liquors, but to allow the States to prevent the use, not by legislating against it, but by seizing importations before they reach the consignee. A more complete perversion and reversing of national and State powers I can not imagine.

Mr. SUTHERLAND. Mr. President, I will remind the Senator from Kentucky that the bill which Senator Knox was discussing was almost identical with the second section of the bill now under consideration.

Mr. PAYNTER. I think perhaps there was more than one bill before the committee, but there was a bill which, I think, was substantially the same as section 2 of the bill under consideration.

I think that Mr. Knox's statement of the question is an admirable one. No better one can be made. It shows a keen comprehension of the respective powers of the Federal and State Governments and a great capacity for lucid and concise statement of constitutional principles.

As I have said, this bill does not purport to regulate commerce between the States. It might more properly be denominated a bill to aid the States in the enforcement of their police power, or, rather, extending the police power of the States. Thus it is an attempt to exercise a jurisdiction alone possessed by the States. In order to do this the Congress is asked to subvert the most valuable clause of the Federal Constitution.

The Supreme Court, in the case of In re Rahrer (140 U. S., 562), said:

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State.

Therefore, Mr. President, when it is stated in the bill under consideration (or the Wilson bill) that an article at a certain time shall be subject to the police power of a State the Congress can not thereby add to the police power of the State.

Such a statement, if viewed from a Constitutional aspect, can not extend the police power of the State. It would be more accurate, I think, if Congress should say that the interstate shipment was terminated upon delivery of the article. Then there would be no reference made to the police power of the State and would not appear by words that Congress was endeavoring to add to the police power of the State. This would be better, as Congress can neither confer upon or diminish the police power of the State. In my opinion it is very inaccurate to make a declaration that at a certain period it shall be within the police power of the State, because when the shipment is terminated the police power of the State takes hold and control of the article that is shipped. So, as I say, it is very misleading to make a statement of that kind in the bill. It is not constitutionally accurate. It is not the province of Congress to define the police power of the States. It is the province of Congress to make uniform rules to regulate commerce; not, however, to confer such power upon the States.

Under the second section of the bill it is attempted to permit the State to seize liquors imported for personal use. Without discussing the question, I desire to quote from Vance *v.* Vandercook (170 U. S., 455), wherein the court said:

> The right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State; it takes its origin outside of the State of South Carolina, and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government.

It was said in Heyman *v.* Southern Railway (203 U. S., 274–275):

> The interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress, which allows State authority to attach to the original package before sale, but only after delivery. (Scott *v.* Donald and Rhodes *v.* The State of Iowa, supra.) It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States, and that the inhibitions of a State statute do not operate to prevent liquors from other States from being shipped into such State on the order of a resident for his use.

In the case of Bowman *v.* Chicago & North Western Railway Co. (125 U. S., 493), discussing legislation similar to that which is here proposed, the court characterized the result that would flow therefrom as "commercial anarchy," and there said:

> Can it be supposed that by omitting any express declarations on the subject Congress has intended to submit to the several States the decision of the question in each locality of what shall and what shall not be articles of traffic in the interstate commerce of the country? If so, it has left to each State, according to its own caprice and arbitrary will, to discriminate for or against every article grown, produced, manufactured, or sold in any State and sought to be introduced as an article of commerce into any other. If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include tobacco, or any other article, the use or abuse of which it may deem deleterious. It may not choose even to be governed by considerations growing out of the health, comfort, or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the promotion and benefit of its own agriculture, manufactures, or arts of any description, and prevent the introduction and sale within its limits of any or of all articles that it may select as coming into competition with those which it seeks to protect. The police power of the State would extend to such cases as well as to those in which it was sought to legislate in behalf of the health, peace, and morals of the people. In view of the commercial anarchy and confusion that would result from the diverse exertions of power by the several States of the Union, it can not be supposed that the Constitution or Congress have intended to limit the freedom of commercial intercourse among the people of the several States. "It can not be too strongly insisted upon," said this court in Wabash, etc., Railroad Co. *v.* Illinois (118 U. S., 557, 572), "that the right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might choose to impose upon it, that the commerce clause was intended to secure. This clause giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution." (Cook *v.* Pennsylvania, 97 U. S., 566, 574; Brown *v.* Maryland, 12 Wheat., 419, 446.) And it would be a very feeble and almost useless provision, but poorly adapted to secure the entire freedom of commerce among the States, which was deemed essential to a more perfect union by the framers of the Constitution, if at every stage of the transportation of goods and chattels through the country the State within whose limits a part of the transportation must be done could impose regulations concerning the price, compensation, or taxation, or any other restrictive regulation interfering with and seriously embarrassing this commerce.

UNIFORM SYSTEM.

To this point I have considered the effect of the commerce clause of the Constitution upon the proposed legislation. My opinion is, as appears from my discussion, that the proposed legislation is violative of that clause.

While it is not necessary for the purpose of my argument that I should do so, still it is my desire to call the attention of the Senate to another provision of the Constitution which I think has a bearing upon the question. However, I want it distinctly understood that I am of the opinion that it is not necessary for any Senator to agree with me in the suggestions I am about to make in order to reach the conclusion that he should vote against the bill. As the question under consideration is important, involving a constitutional question, I think it proper to make the suggestion which I purpose.

While the primary purpose of section 2, Article IV, was to be a restrictive power on the States, yet the language does not confine its restrictive effort to the States alone, for if there are no other provisions of the Constitution which would prevent Congress from doing the thing therein prohibited, that article would do so. It is a constitutional guaranty which the legislatures of States, Congress, and the courts should respect. If I am in error as to this, then most of the argument which I shall make with reference thereto is applicable to the question of the necessity for a uniform rule for the regulation of interstate commerce.

Federal laws affecting the citizens of the United States must be uniform in their application, for it is provided by section 2, Article IV, of the Constitution, that:

> The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.

This provision forbids Congress to enact a general law which gives citizens of one State privileges not given to those of another State. The Congress can not constitutionally impose restrictions upon the commerce of the citizens of one State that are not imposed on the citizens of another State.

If the Congress by legislation prevents citizens of one State from importing recognized articles of commerce, while by legislation such right is granted to the citizens of another State, the Constitution is violated. If the right to ship intoxicating liquors from Kentucky to Iowa is denied, then the right to ship the same kind of liquors from New York to Iowa must be denied. The Congress can not declare that intoxicating liquors are proper articles of commerce for the use of citizens of the United States residing in one State, and declare that the same kind of liquors are improper articles of commerce for the use of citizens of the United States residing in another State.

It is proposed by this bill, in effect, to do that very thing by attempting to give permission to some States to enact laws which recognize intoxicating liquors as proper articles of commerce for the consumption of their citizens, while other States may enact laws denying that intoxicating liquors are proper articles of commerce for the consumption of their citizens. This illustration shows that the Congress is asked to grant the States authority to enact laws which deny to the citizens of one State privileges which the laws of another State grant to citizens thereof. In other words, the Congress is asked to authorize the States to do that which is forbidden by the Constitution.

If it were conceded that the Congress has the power to prohibit the interstate shipment of liquors, I feel sure that no one would contend that an act would be valid which allowed Kentucky to ship liquors to the Eastern States while denying to the citizens of any other State the right to ship liquors to the Eastern or any other States of the Union.

To enact a law which allows a citizen and consignee in one State to receive an article of commerce by an interstate shipment and deny a citizen and consignee in another State the right to receive a like article of commerce is certainly a denial of privileges to the citizens of one State the privileges enjoyed by those of another State. This is entirely apart from the right of the State to legislate as to the disposition of the article after it has been delivered to the citizen and consignee.

If a rule or regulation of commerce can be said to be established by the bill, then it is only such as may be established by the States. If the States do not pass laws establishing a rule with relation to the interstate shipment of liquors, then no rule exists.

Therefore it is apparent that Congress has surrendered the power to make the rule to regulate commerce to the States. So it is reduced to this: No State legislation, no rule.

I am not unmindful of the fact that the Court in Bartemeyer *v.* Iowa (18 Wall., 136) has held that the right to sell a prohibited article can never be deemed one of the privileges and immunities of the citizen which are sought to be preserved by the fourteenth amendment.

That is certainly true, because the police power of the State is recognized under the Constitution, and it is not sought by the fourteenth amendment to diminish or affect the police power of the State; and, therefore, the State having the power to regulate or prohibit the sale of liquors, no one could successfully claim that the fourteenth amendment secures to him protection against the police power of the State.

An attempt is being made by the bill under consideration to surrender the power to regulate commerce, which is vested in the Congress. It is an attempt not only to surrender the power of Congress to regulate commerce but at the same time, by that act of Congress and an act of the legislature, to commit an additional violation on the Constitution by allowing some of the States to deprive the citizens of such States of the privileges which are enjoyed by the citizens of other States. It is an attempt to have both sovereignties combine to violate both provisions of the Constitution, to which I have called attention.

If a citizen of one State is deprived of the right as consignee to have delivered to him an interstate shipment of an article of commerce, and such right is recognized in a citizen of another State, certainly it is depriving the citizens of one State of a right that is enjoyed by the citizens of other States, and in doing this the commerce clause of the Constitution is disregarded as well as the provisions of section 2, Article IV.

So long as intoxicating liquors are legitimate articles of commerce their owners should enjoy the same right to have them transported as the owners of other articles of commerce, and therefore Congress must furnish the same protection to them until they reach the consignee as to other articles of commerce, and certainly they are entitled to the same protection under the Constitution as other articles of commerce.

I do not now recall any case in the Supreme Court involving the effect of legislation somewhat similar to that here proposed where the court expressly decided what relation section 2, Article IV, of the Constitution had to such question. In the dissenting opinion in the Lottery case delivered by Chief Justice Fuller, in which Justices Brewer, Shiras, and Peckham agreed, there is a general discussion of this clause of the Constitution. It is there said:

> Congress is forbidden to lay any tax or duty on articles exported from any State, and while that has been applied to exports to a foreign country, it seems to me that it was plainly intended to apply to interstate exportation as well. Congress is forbidden to give preference by any regulation of commerce or revenue to the ports of one State over those of another; and duties, imposts, and excises must be uniform throughout the United States.
>
> "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." This clause of the second section of Article IV was taken from the fourth article of confederation, which provided that "the free inhabitants of each of these States * * * shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State and shall enjoy therein all the privileges of trade and commerce"; while other parts of the same article were also brought forward in Article IV of the Constitution.
>
> Mr. Justice Miller, in the Slaughterhouse cases (16 Wall., 36, 75), says that there can be but little question that the purpose of the fourth article of the Confederation and of this particular clause of the Constitution "is the same and that the privileges and immunities intended are the same in each."
>
> Thus it is seen that the right of passage of persons and property from one State to another can not be prohibited by Congress. But that does not challenge the legislative power of a sovereign nation to exclude foreign persons or commodities or place an embargo, perhaps not permanent, upon foreign ships or manufactures.

I have not discussed the question as to the power of Congress to prohibit the interstate shipment of liquors, because the proposed legislation does not go to that extent. If the power exists, the time for its exercise has not arrived, for it is said by the Supreme Court in Scott *v.* McDowell (165 U. S., 91) that—

> So long as the State legislation continues to recognize wines, beer, and spirituous liquors as articles of lawful consumption and commerce so long must continue the duty of the Federal courts to afford such use and commerce the same measure of protection under the Constitution and laws of the United States as is given to other articles.

I have not discussed the Lottery case, because the proposed legislation is entirely different from statute there under consideration.

To relieve ourselves of responsibility and criticism we should not improperly dump constitutional questions upon our Supreme Court, to have it assume unnecessary responsibility and receive, perchance, criticism. To do this is not fair or honorable and can not be justified, although the members of that court are not elected biennially or sexennially.

If we should have a doubt as to the constitutionality of a bill, whether such doubt arises from a careful study of the question or whether it be superinduced by a consideration of the consequences to us for our act, it is our duty to vote against the bill. The rule of action for government of the Congress is unlike the rule observed by the courts in determining the constitutionality of an act, for the court resolves all doubts in favor of its validity, while the lawmaking body must resolve all doubts as to its constitutionality against the passage of the bill. This doctrine is well stated by Mr. Cooley in his work on Constitutional Law, second edition, page 160, as follows:

> This course is the opposite to that which is required of the legislature in considering the question of passing a proposed law. Legislators have their authority measured by the Constitution; they are chosen to do what it permits and nothing more, and they take solemn oath to obey and support it. When they disregard its provisions, they usurp authority, abuse their trust, and violate the promise they have confirmed by an oath. To pass an act when they are in doubt whether it does not violate the Constitution is to treat as of no force the most imperative obligations any person can assume. A business agent who would deal in that manner with his principal's business would be treated as untrustworthy; a witness in court who would treat his oath thus lightly and affirm things concerning which he was in doubt would be held a criminal. Indeed, it is because the legislature has applied the judgment of its members to the question of its authority to pass the proposed law, and has only passed it after being satisfied of the authority, that the judiciary waive their own doubts and give it their support.

The Congress should be governed by this rule. If we are not, then we disregard a sane and safe rule. Courts resolve the doubts in favor of the validity of an act, because they credit members of the lawmaking branch of the Government with having passed the act believing it to be valid. When the Congress has solemnly proclaimed its belief in the validity of an act the courts when in doubt will not allow their doubts to cause them to adjudge invalid an act when the Congress has declared it a valid act.

If it becomes the rule of the Congress to resolve doubts in favor of the constitutionality of an act and the courts resolve all doubts in favor of its validity, then we have the spectacle of an act being adjudged valid when both the Congress and the courts doubt its validity. If such a rule is to prevail, what a humiliating and lamentable spectacle would be presented to the country and the world.

If the Congress should pass an act and add to it a clause expressing a doubt as to its constitutionality, would the courts in passing upon the question of its constitutionality resolve doubts in favor of the validity of the act? Certainly they would not do so, but on the contrary would announce the rule that all doubts under the circumstances of the case should be resolved against the validity of the act. If they did not do that we would have an enforceable act when both the Congress and the courts doubt its validity.

It is important that we should preserve the fundamental law of the land. It was made to secure our lives, liberty, and property, and as a guaranty of the same rights to those who are to follow us. We should preserve it, not violate it, because perchance in some particular case we would have it otherwise than it is. If those who have been honored with high public position, because of their supposed knowledge, patriotism, and integrity disregard the Constitution, then how can those who have trusted and honored them be expected to maintain their confidence in their public servants or reverence for our institutions? Why not preserve and uphold our Constitution, which was said by an illustrious man to be the greatest instrument ever stricken at one time from the brain of man? If it should be changed, let it be done in the manner prescribed by its terms; it is corrupt and hazardous to do it otherwise. In the farewell address, publicly read once each year in this Chamber, of him who was "First in war, first in peace, and first in the hearts of his countrymen," it is said:

> If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in a way which the Constitution designates. But let there be no change by usurpation; for, though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

If there are those here who believe that this bill is unconstitutional or who doubt its constitutionality, let them by their votes say they are willing to maintain the obligation which they took upon assuming official position. Let them present to the present and future generations a shining example of courage and devotion to duty. What greater achievement could a public servant desire than to merit and have placed upon the tablet erected to his memory these words:

> He discharged every public duty conscientiously and fearlessly, and in so doing enjoyed his own self-respect and merited that of his countrymen.

Did I take a selfish view of this matter, I would want to see this bill pass, for an early vindication of my position would surely come in the form of the judgment of the Supreme Court of the United States. If the bill fails to pass, my vindication will be postponed until a subsequent Congress passes a bill similar to the one under consideration.

Mr. POMERENE. I desire to give notice that at the close of the morning business on Monday I will, with the permission of the Senate, discuss briefly Senate bill 4043.

Mr. SUTHERLAND. I wish to give notice that at the conclusion of the remarks of the Senator from Ohio, of which he has just given notice, I shall desire to address the Senate upon the same measure.

Mr. KENYON. I call the attention of the Senator from Utah to the fact that there are a number of Senators, I think, who desire to speak on this bill, and as the vote is to be taken between 3 and 6 o'clock, it might be advisable if we could take up the bill at the close of the morning business on Monday.

Mr. SUTHERLAND. I understand that that is the effect of the notice given by the Senator from Ohio and by myself.

Mr. KENYON. The Senator from Ohio gave notice that he would speak at the close of the routine morning business?

Mr. POMERENE. I have just given that notice.

CONNECTICUT RIVER DAM.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 8033) to authorize the Connecticut River Co. to relocate and construct a dam across the Connecticut River, above the village of Windsor Locks, in the State of Connecticut.

Mr. BURTON. Mr. President——

Mr. KENYON. I know there are a number of Senators who are desirous of being here when the Senator from Ohio speaks. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DILLINGHAM in the chair). The Senator from Iowa suggests the lack of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Clarke, Ark.	Kenyon	Sheppard
Bacon	Curtis	La Follette	Simmons
Bankhead	Dillingham	Lea	Smith, Ariz.
Bourne	Dixon	Lippitt	Smith, Ga.
Bradley	Fletcher	Lodge	Smith, Mich.
Brady	Gallinger	McCumber	Smith, S. C.
Brandegee	Gardner	McLean	Smoot
Bristow	Gore	Martine, N. J.	Stephenson
Brown	Gronna	Myers	Sutherland
Bryan	Hitchcock	Nelson	Swanson
Burnham	Jackson	O'Gorman	Thomas
Burton	Johnson, Me.	Page	Thornton
Catron	Johnston, Ala.	Percy	Tillman
Clapp	Jones	Perkins	Townsend
Clark, Wyo.	Kavanaugh	Pomerene	Webb

Mr. THORNTON. I should like to announce the necessary absence of my colleague [Mr. FOSTER] from the Chamber on account of illness in his family and that he is paired with the junior Senator from Wyoming [Mr. WARREN]. I ask that this announcement may stand for the day.

Mr. SMOOT. I wish to announce the unavoidable absence of the Senator from New York [Mr. ROOT]. He has a general pair with the Senator from Indiana [Mr. SHIVELY].

I was also requested to announce the necessary absence of the Senator from Wyoming [Mr. WARREN] and the Senator from Rhode Island [Mr. WETMORE], as they are on Appropriations Committee work.

Mr. HITCHCOCK. I desire to announce the absence on public business of the junior Senator from Indiana [Mr. KERN].

The PRESIDING OFFICER. On the call of the roll 60 Senators have answered to their names and a quorum is present. The Senator from Ohio will proceed.

Mr. BURTON. Mr. President, at the close of my remarks on Wednesday I was about to quote from two decisions of the United States Supreme Court relating to the use of surplus water. Those decisions sustain the contention that the right exists to appropriate and dispose of surplus water power in case an improvement has been made for the promotion of navigation. These two leading cases arose from circumstances relating to an improvement in the Fox River in the State of Wisconsin. The first is reported in One hundred and forty-second United States, page 254. The other, arising under somewhat different circumstances but relating to the same improvement, is reported in One hundred and seventy-second United States, page 68.

I especially desire while reading from these cases that there may be no interruption. The cases speak for themselves, and the material included in them covers almost every phase of this subject, and will make it, I think, much clearer to the Senate than could be derived from any interlocutory discussion.

In the year 1846, in which the State of Wisconsin was admitted to the Union, Congress granted certain lands to the State for the purpose of improving the navigation of the Fox and Wisconsin Rivers. The legislature, by an act approved in 1848, accepted the grant, and by a subsequent act (p. 256), entitled "An act to provide for the improvement of the Fox and Wisconsin Rivers, and connect the same by a canal," created a board of public works to superintend the construction of the improvement. It was provided by this act that the water power created by the erection of a dam should belong to the State, subject to the future action of the legislature. The board was limited in their expenditures to the proceeds of the sale of the land granted by Congress. A contract was made soon after with private parties for the improvement.

In the year 1853 the State, finding it embarrassing to proceed with the improvement, created a corporation, known as the Fox & Wisconsin Improvement Co., the object of which was to relieve the State from indebtedness and at the same time to secure the prosecution of the work. A contract was made with this company, under which all the dams, locks, water power, and so forth, were vested in it.

The company built a dam and provided for the utilization of the water power, and, in the belief that it owned the hydraulic power, bought lands adjacent to the canal for the purpose of rendering the power available. This company met with embarrassment, and under the foreclosure of a mortgage its property was sold. In the meantime, the Federal Government was requested to take over the improvement. Action was taken looking to that end about the year 1870. A few years later the Federal Government again assumed control and built another dam distinct from the first, which was completed in the year 1876. In the meantime the Green Bay & Mississippi Canal Co. had been incorporated and became vested under the foreclosure with all rights in the water power. A conveyance was made by this company to the Government of the United States in which it reserved the water power.

I am thoroughly aware, Mr. President, that the argument will be made that this creates an exceptional situation; that the State could grant rights to this Green Bay & Mississippi Canal Co. under which it could utilize water power; and that those rights are the basis of its contention in the litigation which occurred. A careful examination of the decision utterly disproves that contention, however. In the first instance, it was conceded in the argument of counsel, who denied the right to use this surplus power, that the State could not make expenditures or appropriations for the development of water power.

Throughout the whole opinion the reasoning of the court is based upon general principles relating to the right of the agency or State which controls the navigation to utilize the surplus water power. Again, the decision in One hundred and seventy-second United States is based upon circumstances under which the Government had taken control of the improvement, had changed the locality of the dam, and was prosecuting the work itself.

In the meantime a rival company, known as the Kaukauna Power Co., gained possession of the three lots abutting upon this improvement alongside the pond which had been created by the dam and extending below the dam. It sought to construct a diversion canal through its lands. The Green Bay Co. applied to the court in Wisconsin for an injunction preventing the power company from interfering with its right to enjoy the surplus water.

The circuit court, the lower court in the State of Wisconsin, dismissed the petition, but the plaintiffs appealed to the Supreme Court of Wisconsin, in which forum the judgment below was reversed. An injunction was granted against the Kaukauna Co., the one owning the abutting lots, and it was held that the right to utilize the power belonged to the Green Bay Co. From that decision an appeal was taken to the Supreme Court of the United States.

I wish to read, Mr. President, briefly from the argument of the counsel for the plaintiffs in error, those who opposed the claim that the surplus power belonged to the one who had the navigation. Their contention was overruled by the Supreme Court of the United States.

> The plaintiffs in error admit that it was of vital interest to the State and to those intrusted with the preservation and maintenance of the improvement that they should have the entire control of the dam, embankments, canals, and all appliances necessary for the purposes of navigation, as well as of the waters necessary for navigation in the pond created by the dam. But they deny that the absolute control of such water involves the ownership or the right to the use of the surplus over and above what is necessary for the purposes of navigation. They deny that the surplus water power is either necessary or convenient for the purposes of navigation.

I am quoting from page 265, and I quote from this to show what the contention was which was overruled. The Supreme Court by Mr. Justice Brown says on page 271—I read this to give the facts relied upon:

> After the building of said new dam by the United States, as aforesaid, it, the said United States, constructed and extended the said embankment along the southerly shore of said Fox River, on said lot 5, from the said old dam downstream to, and joined and terminated the same upon, its said new dam, as the same is now in use; and these defendants state, upon information and belief, that neither the United States or any other party ever by purchase, condemnation, dedication, or in any other way acquired of or from the owner of said lot 5 the right to so construct or abut said new dam upon said lot 5, or to so lengthen or construct said new part of said embankment thereupon, etc.

I read, however, especially from pages 272 and 274. This goes into the subject so thoroughly that I will read these pages at length:

The case of the plaintiff canal company depends primarily, as stated above, upon the legality of the legislative act of 1848, whereby the State assumed to reserve to itself any water power which should be created by the erection of the dam across the river at this point. No question is made of the power of the State to construct or authorize the construction of this improvement and to devote to it the proceeds of the land grant of the United States. The improvement of the navigation of a river is a public purpose, and the sequestration or appropriation of land or other property, therefore, for such purpose is doubtless a proper exercise of the authority of the State under its power of eminent domain. Upon the other hand, it is probably true that it is beyond the competency of the State to appropriate to itself the property of individuals for the sole purpose of creating a water power to be leased for manufacturing purposes. This would be a case of taking the property of one man for the benefit of another, which is not a constitutional exercise of the right of eminent domain. But if, in the erection of a public dam for a recognized public purpose, there is necessarily produced a surplus of water which may properly be used for manufacturing purposes there is no sound reason why the State may not retain to itself the power of controlling or disposing of such water as an incident of its right to make such improvement. Indeed, it might become very necessary to retain the disposition of it in its own hands in order to preserve at all times a sufficient supply for the purposes of navigation. If the riparian owners were allowed to tap the pond at different places and draw off the water for their own use, serious consequences might arise not only in connection with the public demand for the purposes of navigation, but between the riparian owners themselves as to the proper proportion each was entitled to draw—controversies which could only be avoided by the State reserving to itself the immediate supervision of the entire supply. As there is no need of the surplus running to waste, there was nothing objectionable in permitting the State to let out the use of it to private parties and thus reimburse itself for the expenses of the improvement.

The value of this water power created by the dam was much greater than that of the river in its unimproved state, in the hands of the riparian proprietors who had not the means to make it available. These proprietors lost nothing that was useful to them, except the technical right to have the water flow as it had been accustomed and the possibility of their being able sometime to improve it. If the State could condemn this use of the water with the other property of the riparian owner it might raise a revenue from it sufficient to complete the work which might otherwise fail. There was every reason why a water power thus created should belong to the public rather than to the riparian owners. Indeed, it seems to have been the practice, not only in New York, but in Ohio, in Wisconsin, and perhaps in other States in authorizing the erection of dams for the purpose of navigation or other public improvement, to reserve the surplus of water thereby created to be leased to private parties under the authority of the State; and where the surplus thus created was a mere incident to securing an adequate amount of water for the public improvement, such legislation, it is believed, has been uniformly sustained. Thus, in Cooper *v.* Williams (4 Ohio, 253), the law authorizing the construction of the Miami Canal, from Dayton to Cincinnati, empowered the canal commissioners to dispose of the surplus water power of the feeder for the benefit of the State, and their action in so disposing of the water was justified. The ruling was repeated in the same case, Fifth Ohio, 391.

I think it is unnecessary for me to read these other cases, but I may remark incidentally that this is similar to a power that is exercised by numerous counties in the various States. They build courthouses. In their construction there is an amount of extra space. That extra space is leased to lawyers for a compensation, just as a private owner would lease his property. It has been held by the courts, and very properly no doubt, that when the general public use fails, the incidental use fails with it.i For instance, in the State of Massachusetts there is a decision by Chief Justice Shaw to the effect that, although in the building of a market house it is perfectly proper to construct an auditorium in the upper portion, which may be leased and a revenue derived from it, yet if the use for a market house fails or is abandoned the right to lease the incidental portion also fails with it.

Again, on page 275, the court says:

The true distinction seems to be between cases where the dam is erected for the express or apparent purpose of obtaining a water power to lease to private individuals, or where in building a dam for a public improvement a wholly unnecessary excess of water is created, and cases where the surplus is a mere incident to the public improvement and a reasonable provision for securing an adequate supply of water at all times for such improvement.

Then, further, on page 276, it is said:

So long as the dam was erected for the bona fide purpose of furnishing an adequate supply of water for the canal, and was not a colorable device for creating a water power, the agents of the State are entitled to great latitude of discretion in regard to the height of the dam and the head of water to be created, and while the surplus in this case may be unnecessarily large there does not seem to have been any bad faith or abuse of discretion on the part of these charged with the construction of the improvement. Courts should not scan too jealously their conduct in this connection if there be no reason to doubt that they were animated solely by a desire to promote the public interests, nor can they undertake to measure with nicety the exact amount of water required for the purposes of the public improvement. Under the circumstances of this case we think it within the power of the State to retain within its immediate control such surplus as might incidentally be created by the erection of the dam.

Again, on page 281, I find the following:

The dam was built for a public purpose, and the act provided that if, in its construction, any water power was incidentally created it should belong to the State, and might be sold or leased in order that the proceeds of such sale or lease might assist in defraying the expenses of the improvement. A ruling which would allow a single riparian owner upon the pond created by this dam to take to himself one-half of the surplus water without having contributed anything toward the creation of such surplus or to the public improvement, would savor strongly of an appropriation of public property for private use. If any such water power were incidentally created by the erection of a dam it was obviously intended that it should belong to the public and be used for their benefit, and not for the emolument of a private riparian proprietor.

I read also from volume 172. The case begins on page 58. It will be noticed that in the earlier decision the word "State" is very generally used, while in the later the term "United States" is very generally employed. The first seems to relate more to State ownership and control during the continuance of that control, and the other decision to the changed conditions created when the United States took over the improvements. I read from the bottom of page 68:

Whether the water power, incidentally created by the erection and maintenance of the dam and canal for the purpose of navigation in Fox River, is subject to control and appropriation by the United States, owning and operating those public works, or by the State of Wisconsin, within whose limits Fox River lies, is the decisive question in this case.

Upon the undisputed facts contained in the record, we think it clear that the canal company—

That was a case where the lessee leased from the Government of the United States—

We think it is clear that the canal company is possessed of whatever rights to the use of this incidental water power that could be validly granted by the United States.

It goes on to say that the Fox River is a navigable stream, and quotes a familiar decision in the case of *The Montello*, Twentieth Wallace, and states that the Supreme Court reversed the decision of the lower court, finding this was not a navigable stream, and held that the Fox River is a stream of a national character, and that steamboats navigating its waters are subject to governmental regulation.

I also wish to read from this decision, on pages 80, 81, and 82, beginning on page 80:

The substantial meaning of the transaction was—

And I wish to call especial attention to this part of it, because of its bearing upon the question of whether this was a privilege derived from the United States.

The substantial meaning of the transaction was that the United States granted to the canal company the right to continue in the possession and enjoyment of the water powers and the lots appurtenant thereto, subject to the rights and control of the United States as owning and operating the public works.

A little later it is stated:

The method by which this arrangement was effected, namely, by a reservation in the deed, was an apt one and quite as efficacious as if the entire property had been conveyed to the United States by one deed and the reserved properties had been reconveyed to the canal company by another.

That is, it is the same as if the United States had possessed it all and then conveyed the water power to the Green Bay & Mississippi Canal Co. To continue:

So far therefore as the water powers and appurtenant lots are regarded as property, it is plain that the title of the canal company thereto can not be controverted, and we think it is equally plain that the mode and extent of the use and enjoyment of such property by the canal company fall within the sole control of the United States. At what points in the dam and canal the water for power may be withdrawn and the quantity which can be treated as surplus with due regard to navigation must be determined by the authority which owns and controls that navigation.

Not the State of Wisconsin, but "the authority which owns and controls that navigation," which was in this case the Government of the United States.

Mr. O'GORMAN. Mr. President——

Mr. BURTON. I should prefer to proceed. This is all connected. I will be glad to yield to the Senator from New York later.

Mr. O'GORMAN. If the Senator will pardon a question at that point, do I understand the Senator from Ohio to claim that the United States owns the navigation under the commerce clause of the Constitution?

Mr. BURTON. Of course whether it owns or does not own it has little bearing on this subject. It has that control which is the incident of trusteeship, and you may almost say of ownership.

Which owns and controls that navigation—

Is the language of the decision.

What use is there here of talking about ownership? Who is in control of the navigation? Who owns the navigation if it has any owner? The United States of America under its paramount power.

In such matters there can be no divided empire.

That is, you can not put the control of the navigation in one hand and put the control of the water power there generated

in another. You must keep them together. That is the sound expression not only of law but of fundamental policy and, I might add, of good business as well. From page 81 I quote this:

Several cases are cited in the briefs for the defendants in error, wherein it has been decided by State supreme courts of high authority that whatever remains of the stream, beyond what is wanted for the public improvement, and which continues to flow over the dam and down the original channel of the river, belongs to riparian owners upon the stream in the same manner as if the State dam had not been erected.

The court goes on to say:

Our examination of the cases so cited has not enabled us to perceive that they are applicable to the present subject. In none of them have we found that, by the State legislation, was there a fund created out of the use of the surplus water to be expended in the completion and maintenance of the public improvement.

That brushes aside all these cases as not analogous either to the one under consideration or to the proposed project which we now have before us.

As we have seen, the entire legislation, State and Federal, in the present instance has had in view the dedication of the water powers incidentally created by the dams and canal to raising a fund to aid in the erection, completion, and maintenance of the public works—

Just exactly this case—

and, as we have further seen, provision was made in the Federal act of 1875 for the ascertainment and payment of damages, in respect to which this court said—

Arrangement is made here for the ascertainment and payment of damages. That responsibility is imposed upon the Connecticut River Co. They are compelled to secure the riparian rights. In the last paragraph the court says:

Our conclusion, then, is that, as by the judgment of the Supreme Court of Wisconsin there was drawn into question the validity of an authority exercised under the United States—

Let those who say this was an authority exercised by the State of Wisconsin bear in mind that the court in the very last paragraph gives us the reason for taking jurisdiction of the case, namely, that—

Our conclusion, then, is that, as by the judgment of the Supreme Court of Wisconsin there was drawn into question the validity of an authority exercised under the United States, to wit, the granting of the said water powers and easement, and the decision was against the validity of such authority, thereby depriving the plaintiff in error of property without due process of law, the judgment of that court must be, and is hereby, reversed.

This case was again before the court on an application for a rehearing, and the Supreme Court again said, in volume 173, page 190:

While the courts of the State may legitimately take cognizance of controversies between the riparian owners concerning the use and apportionment of the waters flowing in the nonnavigable parts of the stream, they can not interfere by mandatory injunction or otherwise with the control of the surplus water power incidentally created by the dam and canal now owned and operated by the United States.

At any rate, the works are owned by the United States; whether the water was owned or not is utterly immaterial, because the absolute control belongs to the United States.

Next, Mr. President, I want to lay down the proposition that that which the Government may do directly it may do indirectly in such a case as this. I do not think I need go beyond a single quotation from the United States Supreme Court Reports found in volume 127, at page 1. This was in reference to the building, I believe, of the Pacific Railroad:

Congress has authority in the exercise of its power to regulate commerce among the several States to construct, or authorize individuals or corporations to construct, railroads across the States and Territories of the United States.

That is, the Government of the United States may go into the Connecticut River and make this improvement directly, or it may authorize a corporation or individual to carry out the same great purpose, namely, the promotion of navigation.

Mr. FLETCHER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Florida?

Mr. FLETCHER. Just at that point, before proceeding with a different phase of his argument——

Mr. BURTON. I yield to the Senator.

Mr. FLETCHER. Do I understand that this river is navigable throughout its length?

Mr. BURTON. The Senators from Vermont can tell better than I. I fancy it is not navigable up in Vermont; but, in answer to the question of the Senator from Florida, it is sufficient to say that it is navigable both above and below the location of the proposed dam. I gave the figures in my remarks on Wednesday.

Mr. FLETCHER. Now, if the Senator will allow me, I should like to call his attention to a decision of the Supreme Court of Florida with which he might want to deal in this discussion. Our supreme court, in the case of State *v.* Gebring (56 Fla., 603)—I will not take the time to read any extensive portions of the opinion——

Mr. BURTON. What is the point in it?

Mr. FLETCHER. I will only read one or two of the headnotes. The court says:

6. For the purpose of aiding navigation or commerce, or of encouraging new industries and the development of natural or artificial resources in the interest of all the people, the State may grant reasonable and limited rights and privileges to individuals in the use of lands under navigable waters in the State, but such privileges should not unreasonably impair the rights of the whole people of the State in the use of the waters or the lands thereunder for the purposes implied by law, nor relieve the State of the control and regulation of the uses afforded by the lands and the waters thereon.

Another headnote says:

4. The State can not abdicate general control over the lands under navigable waters within the State, since such abdication would be inconsistent with the implied legal duty of the State to preserve and control such lands and the waters thereon and the use of them for the public good.

Another headnote is to the same effect.

Mr. BURTON. I take it that is good law, but it seems to refer, however, to a nonnavigable stream.

Mr. FLETCHER. No; it refers to lands under navigable waters, the lands——

Mr. BURTON. I have already discussed that at considerable length. Does the Senator contend that the State of Florida has any such rights in the bed of a stream that it could authorize the construction of a building or a factory by a private individual there?

Mr. FLETCHER. So long as it did not interfere with the general use of the water for navigation purposes and for such purposes as the public itself had an interest in.

Mr. BURTON. Does the Senator from Florida maintain that, as against the United States Government, the State could withhold a portion of the bed of a stream from occupancy, say, for building a pier or a bridge or anything of that kind?

Mr. FLETCHER. I claim that the State itself owns the land under the navigable waters and the lands up to and including low and high water, and that the State not only owns the land but that it also owns the right to the use of the waters so long as it does not interfere with the general use for navigation purposes.

Mr. BURTON. What is meant by "the general use"?

Mr. FLETCHER. The public have a right, of course, to the navigable waters; that they shall remain navigable, and that they shall be unobstructed for navigation purposes; but, beyond that, it seems to me that the General Government has no power or control. I will read on that point the fifth headnote of this decision. It is as follows:

5. The rights of the people of the State in the navigable waters and the lands thereunder, including the shores or spaces between ordinary high and low water marks, are designed for the public welfare, and the State may regulate such rights and the uses of the waters and the lands thereunder for the benefit of the whole people of the State as circumstances may demand subject, of course, to the powers of Congress in the premises.

Mr. BURTON. Subject to the power of Congress, of course. I have discussed at considerable length the question of what was the right of the State in the bed of a stream. It is not really of any importance in this particular case because, as long ago as 1824, the State of Connecticut granted to this Connecticut River Co. the right to improve that stream for the purpose of navigation. I also called attention to the fact that a court in the State of Connecticut itself had held that where, under the authority of the Secretary of War and the Chief of Engineers, a new channel was dug along the shore which interfered with the enjoyment of oyster beds—which, of course, are substantive property—the owners of the oyster beds were not entitled to compensation.

I think I can clear this situation as to the right of a State as opposed to that of the United States by reading a sentence or two from the syllabus of an opinion in Stockton, Attorney General of New Jersey, against The Baltimore & New York Railroad Co. and others. It was decided as a circuit-court case in New Jersey in 1887. The decision was rendered by Justice Bradley, of the Supreme Court. It is true the case was never taken to the Supreme Court, but in the case of Luxton against North River Bridge Co., in One hundred and fifty-third United States, the Supreme Court refers to Judge Bradley's opinion with approval. This is the case to which I have already referred briefly. The State of New Jersey had passed a law forbidding the building of any bridge between New Jersey and Staten Island. The State of New Jersey had all the rights of the old English sovereigns in the bed of the stream—the ground under the water—the same as in the Florida case. Congress granted the right to build a bridge across the water between New Jersey and Staten Island, and an attempt was made to enjoin the

bridge company on the ground that the State of New Jersey had passed a statute forbidding the building of any bridge there, and also because in the location of the bridge piers the foundations would be placed under water upon this land which belonged to the State of New Jersey. Justice Bradley decided against both contentions; and this is the syllabus as regards the right to build the bridge:

The power of Congress in this respect—

That is, to authorize the building of bridges in such cases—

being supreme, and the act in plain terms granting authority to build the bridge, the privilege is not promissory in its character, and may be exercised without the consent or concurrence of the State in which the structure is authorized by the act to be placed.

Again, as regards the land under water:

The shore and lands under water in the navigable streams and waters of New Jersey, which, prior to the Revolution, belonged to the King of Great Britain, as part of the jura regalia of the crown, passed to the State at the close of that war—

Now, here is the principle—

but the State succeeded to them as trustee of the people at large, and, the right of the State therein not being such property as is susceptible of pecuniary compensation, it is not "private property," within the meaning of the Constitution of the United States, amendment 5, providing that private property shall not be taken for public use without just compensation.

I should hesitate a long while to agree to the contention that the State has a fee-simple title in those States in which the bed of stream is said to belong to the State. There may be some such a rule as that under the Spanish law, but certainly not under the common law. This is perhaps something of a digression, Mr. President, but it is of interest in the discussion of this subject. Clearly no such rule would afford any objection here, because the bed of the stream has been acquired by the company which seeks the franchise.

Another general basis for these provisions is the right of the Government, or the power that grants any privilege, to impose reasonable conditions. In arguing in support of that doctrine some have sought to justify provisions which are harsh and so repugnant to the established rules of right between man and man as to make them offensive. But there can be no question but that, in the granting of such privileges as this, reasonable conditions may be imposed. For instance, when the United States authorizes a company to build a bridge across a stream it has reserved the right to control the charges for its use. The strongest case on that subject is one in the Federal Reporter, where the privilege was granted both by the Dominion of Canada or the Province of Ontario—it is immaterial which—and by the State of New York to build the International Bridge across the Niagara River.

Under the privilege granted by the Governments involved the bridge company seemed to have the broadest rights to regulate charges. The Government of the United States, through its courts, asserted the right to control those prices, though the company had the full privilege from both the Province of Ontario and the State of New York, the court stating that the bridge could not have been built there without the consent of the United States, even though it only controlled the water in common with Canada, and hence it was authorized to impose conditions. In the building of bridges the condition has often been imposed that troops and munitions of war of the United States may cross free. It is frequently conditioned that other railway companies may cross the bridge on terms to be equitably adjusted.

Of course, I should say that where the condition is imposed that other railroads may cross the proposed bridge, a further object is to prevent a multiplicity of bridges. But this all arises from the power of the Government when granting a privilege to impose reasonable conditions for the public welfare.

Two cases are quoted in support of this doctrine, which, while they apply, I would not altogether rely upon in support of the right to impose conditions. In the State of Wisconsin a certain insurance company was doing business. It had numerous agencies and had expended a considerable amount of money for establishing its business there. The State passed a law to the effect that no foreign insurance company doing business within its borders should remove a case to the United States court.

The company was sued in the State court, and sought to remove the case to the United States court. Although it is not a substantial or essential part of the case, as I recall it, the suit was prosecuted to judgment in the State court, and then was appealed to the United States Supreme Court. In any event, the Supreme Court of the United States sustained the right of the insurance company, notwithstanding it had accepted the condition that it would not remove its case to the United States court, to resort to the Federal tribunal, and based its decision on the ground that no man can barter away his constitutional rights; that in case there is a difference of residence every man has the right to resort to the United States court, and that even if he signs an agreement to the effect that he will not avail himself of the privilege, he does not disable himself from doing so.

Mr. BRANDEGEE. That is on the ground of public policy.

Mr. BURTON. Yes. There was another development in the controversy, however. The State thereupon peremptorily revoked the right of the company to do business in the State of Wisconsin. The Supreme Court of the United States, upon consideration of the case, sustained the right of the State of Wisconsin to revoke the license of the company to do business, notwithstanding the company had simply availed itself of a privilege of which the court asserted it could not divest itself. That case is reported in Ninety-fourth United States. On reconsideration of the same question in Two hundred and second United States, in a similar case, the case of Insurance Company against Prewitt, the Supreme Court recently held, two judges dissenting, that where a rule was laid down that if a nonresident insurance company removed its case to the United States courts its license should be revoked, it could resort to the United States court, but the State could, however, revoke its license.

There are numerous cases on this subject, and I think it will be admitted as a principle of elementary law that when a corporation or an individual takes advantage of a privilege granted in a franchise and obtains a benefit therefrom it is estopped from refusing to comply with the conditions imposed. Another case on this subject is one in which a large claim of the State of Maryland against the United States was in question. An attorney or attorneys were employed to prosecute that claim. Congress passed an act appropriating $375,000, I believe, for the payment of the claim, but imposed as a condition of its payment that no part of it should be paid to any attorney. What the object was it is unnecessary to state. Very likely it was intended to discourage the prosecution of claims against the Government, but that condition was contained in the appropriation. It went to the Supreme Court of the United States eventually, and was decided in the case of Wailes *v.* Smith (156 U. S., p. 271), in an opinion rendered by Mr. Justice White before he was appointed Chief Justice, in which it was held that the money having been accepted under an act that imposed that condition no one could collect any attorney's fees from the amount that was to be paid.

In this connection, Senators, I want to call attention a little further to what I have already said in regard to reports of committees in this body. I made the statement that a bill relating to the Black Warrior River contained a provision that compensation was to be paid to the United States. That was in contradiction of the statement in the minority report. The minority report very boldly contradicted the statement of the majority report. This is the quotation:

A majority of the committee in their report say:

"It appears to be a settled question that the Federal Government may impose a charge for the use of the surplus water not needed for navigation."

We, the minority, deny that this question has been settled, and we challenge the majority to point to a single law on the statute books, or to a report of a single committee in Congress, or to a single decision of the Supreme Court which tends to establish their contention.

I think I cited a sufficient number of instances the other day, but I want to refer to this special case, because it is in the State of Alabama, and the statement which I made on Wednesday was denied by the Senator from Alabama. I could have made the statement even stronger than I did. The very bill, as introduced by Mr. JOHNSTON of Alabama, Senate bill 943, April 13, 1911, contained, on page 4, these conditions:

Provided, That the company—

The company was the Birmingham Water, Light & Power Co. They sought the privilege of using the surplus power—

Provided, That the company shall furnish, free of charge to the Government, at Locks 16 and 17, all power necessary for the operation of said locks, gates, and valves, and for the lighting of the Government stations and houses situated at said locks. And the said contract shall further provide for the payment by the company to the Government of an annual rental for its use of the water power at Dams and Locks 16 and 17 at the rate of $1 per annum per horsepower realized and developed from the water wheels delivering a minimum of not less than 80 per cent of the theoretical horsepower from the natural flowage of the river.

Mr. BANKHEAD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Alabama?

Mr. BURTON. Yes.

Mr. BANKHEAD. I should like to ask the Senator from Ohio if he thinks the Connecticut River dam bill, which we are

now considering, is at all parallel to the case of the Black Warrior River dam bill?

Mr. BURTON. It is in the matter of imposing a charge.

Mr. BANKHEAD. No.

Mr. BURTON. Quite decidedly.

Mr. BANKHEAD. Mr. President, the Government of the United States is building the lock and dam at Lock 17, on the Black Warrior River. It is the riparian owner. It owns all the property in connection with it. In this case there are private owners.

Mr. BURTON. In which case—the case of the Connecticut River?

Mr. BANKHEAD. The case of the Connecticut River. Private owners own the property. Private owners are building the dam. What the minority of the committee intended in this assertion was that no report, no bill, no law, no decision of the Supreme Court had ever recognized the right or the policy of imposing this tax—because it is a tax, and nothing more than a tax—upon a corporation situated as this corporation is in Connecticut, where they are the owners of the property, where they undertake to construct all the works in connection therewith. That is what the minority of the committee intended when it said that no report, no law, no decision of the Supreme Court had authorized any such contention; and we maintain that proposition to this moment. There is no comparison or parallel between the cases the Senator from Ohio has cited and this case of the Connecticut River dam. They are not in the same class at all.

Mr. BURTON. In the first place, Mr. President, I have quoted, and there will be inserted in my remarks——

Mr. BANKHEAD. Excuse me one minute further. I happened to be away from the Senate when this bill introduced by my colleague was passed, and I had overlooked it. It had entirely escaped my notice. The Senator from Ohio was correct in stating the provisions of that bill. I overlooked it, and to that extent we were in error in the statement in the minority report. But, Mr. President, all that provision of the bill authorizing the toll or levying a tax was stricken out of the bill here in the Senate.

Mr. BURTON. Oh, the Senator from Alabama is again in error in regard to that.

Mr. BANKHEAD. I mean when the conference report came in; that is when it was stricken out.

Mr. BURTON. When the conference report came in these provisions for compensation and, in fact, all of them had been so modified in the House; they had so piled Ossa on Pelion that the parties felt they could not accept it, and the whole idea of leasing it to a private party at all was abandoned. They were not satisfied in the House with the mere reservation of compensation. They wanted a number of other things.

Mr. BANKHEAD. I want to say to the Senator from Ohio that if I had been in the Senate when this bill was reported and passed, I should have made the same objection to it that I am making now to the Connecticut River bill.

Mr. BURTON. May I ask the Senator from Alabama, now that he is on his feet, if he had anything to do with the franchise to the Ragland Power Co., included in the river and harbor act of 1911?

Mr. BANKHEAD. Mr. President, that is another exactly parallel case. The Government owned the site, and the Government built the lock and dam.

Mr. BURTON. Oh, did it?

Mr. BANKHEAD. Why, of course it did. All the Ragland Power Co. does is to receive authority to put on a flashboard and make, perhaps, some addition to the height of the dam, so as to create a conduit.

Mr. BURTON. I will ask the Senator from Alabama again, while he is on his feet, if it is not a fact that in his report he agrees to this bill in its entirety except two provisions, and recommends that with the striking out of those two provisions the bills do pass?

Mr. BANKHEAD. Yes.

Mr. BURTON. That is to say, the Senator is in favor of it, except the provision against assignment, and the provision providing for the levying of a charge.

Mr. BANKHEAD. I have no objection to it if it satisfies the people of Connecticut.

Mr. BURTON. With those two provisions out, the Senator agrees to the bill? He is in favor of it?

Mr. BANKHEAD. I should not vote against the bill if they were out. I do not pretend to say that I approve all the provisions of the bill; but with those provisions stricken out I should not resist its passage.

Mr. BURTON. Mr. President, I went over this subject very fully a few days ago——

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Utah?

Mr. BURTON. Kindly allow me to treat of this matter first. Then where does the argument of the Senator from Alabama lead him? It leads him to the conclusion that if the Government builds a dam it may charge for the surplus water.

Mr. BANKHEAD. No, Mr. President; I never have admitted that and I do not admit it now. What I do say is that if the Government builds the dam and the lock and creates power and surplus water, and the corporation wants to use it, the Government might say: "We have built this lock at large expense, and if you will pay us a certain percentage on our investment for the use of the structure you may use it." But I never have agreed that you could charge directly for the use of the water, because the Government does not own the water. It has no control over the water; it has no interest in it except for navigation. I doubt whether the Government could go into the courts and collect the charge that it might levy even where it had built the structure.

Mr. BURTON. What is it that the company developing the power is utilizing? It is not bricks and mortar in the dam. It is the use of the water, flowing water. What is it that the company is paying for? It is the use of the water. It seems to me a decided departure from the actual facts of the case to say that the person who has the privilege is not paying for the use of the water. What else is he paying for?

Mr. BANKHEAD. I will answer the Senator. He is paying for the structure, the cost of the structure; and without the structure, of course, there would be no power.

Mr. BURTON. Why do you not appraise the structure, then, and pay for it in that form?

Mr. BANKHEAD. I have no objection in the world to the Government charging a fair percentage for the use of this structure, if they want to do it. It is a matter of contract, and if the power company does not want to accept it, it need not do it.

Mr. BURTON. Then why is it that in every bill on this subject the basis for compensation is an appraisement not of the value of the structure, not of any work which stands out tangibly there, but of the water power that is created?

Mr. BANKHEAD. That is exactly what I am objecting to in this bill—the appraisement of the water power.

Mr. BURTON. Further than that, the Senator from Alabama says he does not object to this bill when these provisions are taken out.

Mr. BANKHEAD. No; I did not say that either. I said I would not carry my objection to the extent of voting against the bill if the gentlemen up there who are directly interested in it want to accept it.

Mr. BURTON. This is what was said in the minority report, on page 4:

> We recommend the passage of the bill with the amendments suggested.

Mr. BANKHEAD. Yes.

Mr. BURTON. That is about as strong a statement as you can have. Those two amendments are, first, the provision against assignment without the consent of the Secretary of War or a court of competent jurisdiction; second, the provision for imposing a certain charge.

Let us see just what this bill is. I shall have to repeat what I said day before yesterday. The bill demands of the parties that they shall build the dam at their own expense. It demands that they shall build a lock and transfer that lock to the Government free of cost. It demands that they shall acquire all the flowage rights and save the Government harmless from any damage. It requires that they shall furnish to the Government permanently electrical power for the operation of the locks and for facilitating the passage of boats.

How can you draw any line between those requirements for construction, which is exceedingly expensive, and a provision that they shall pay a certain amount for the developed water power? Here all these conditions are imposed. Some of them may be said to be in the past, such as the building; others in the future, such as the furnishing of power for the operation of the locks and this annual rental which is to be paid.

Mr. President, there is not a particle of difference in principle between the two. It all rests upon the right to impose conditions and charges, to compel the grantee or licensee to bear certain burdens as the condition of his obtaining the right. Indeed, the last charge is the fairest of them all, and I will tell you why, Mr. President:

When you build the dam, it is in some degree an experiment as to what power you can develop. When you build the lock, it is not for the use of the water-power company at all. It is for the use of navigation, pure and simple. But when you know how much water power you are going to develop and whether the enterprise is profitable or not, that is the proper

time for the Government to impose a charge—where actual results are achieved by the completion of the works and placing them in operation.

Mr. SUTHERLAND. Mr. President, I shall not ask the Senator to yield to me unless he feels quite willing, but I should like to ask him a question for my own information.

Mr. BURTON. Certainly.

Mr. SUTHERLAND. A moment ago the Senator was speaking about the so-called Black Warrior bill. As I recall the terms of that bill the Government of the United States in reality was building the works in aid of navigation. Am I correct about that?

Mr. BURTON. Yes.

Mr. SUTHERLAND. In the case of the Connecticut River bill, on the other hand, the Government is not building the works in aid of navigation.

Mr. BURTON. Oh, yes; those are the only terms on which it has anything to do with it.

Mr. SUTHERLAND. No; the Government of the United States in that case is overseeing the building of a dam for private purposes in order that navigation may not be interfered with, and as it seems to me there is a very clear distinction between the two classes of cases.

Mr. BURTON. Not at all.

Mr. SUTHERLAND. If the Senator will bear with me, in the Black Warrior case the Government of the United States, in pursuance of an undoubted power under the Constitution—namely, the power to regulate commerce—is constructing works to improve the navigability of a stream. Having in pursuance of its undoubted power constructed a dam or other works, it has incidentally created property. True, it is property that was potentially in the stream to begin with, but it had no practical existence until the dam was constructed which raised the level of the water. By raising the level of the water it created a property which belonged to somebody. As it seems to me, the Government which created it, the Government of the United States, would have the same right to sell that property or to dispose of it that it would have to sell supplies that it had acquired for the use of the Army and the Navy and that were no longer required for those particular purposes.

In the case of the Connecticut River bill, that condition of things does not exist. The Government permits the construction of this dam, but the dam belongs to the private owner; and when, by raising the level of the water, power is created and thus property is created, the property belongs to the owner of the dam. How can the Government in that case insist that the owner of this property shall pay it something?

Mr. BURTON. On the general rule that whenever anyone enjoys a privilege which he obtains from the United States compensation may be required for it.

I think the Senator from Utah does not exactly understand the situation. He speaks of the Connecticut River case as one where the Government is overseeing the construction of works for the purpose of preventing obstacles to navigation. That is not the case at all. The lock and dam are just as much required in the Connecticut River as they are in the Black Warrior River, and probably would minister to a very considerably greater traffic. It is a situation where there are rapids 5½ miles long, cutting in two the navigable portions of the river.

Mr. SUTHERLAND. May I ask the Senator why the Connecticut River Co. is constructing this dam? Is it for commercial purposes, for their own uses, in order to make profit from it, or is it to improve the navigability of the river?

Mr. BURTON. So far as their own immediate purposes are concerned, it is no doubt for commercial purposes, although the company was organized in 1824 and has enjoyed a charter since then for navigation. That was the original object of the company—the promotion of navigation in the Connecticut River. Now, what is the difference? Here is a navigable stream. Would the Senator from Utah say that as a condition of allowing the construction of a dam in a navigable stream Congress may not impose the restriction that they must build with that dam a lock as well, so that boats can pass through it?

Mr. SUTHERLAND. Certainly Congress may do that. That is to prevent the obstruction of the navigability of the river.

Mr. BURTON. What good does that lock do to the licensee? What is that except the exercise of the authority of the Government in imposing a restriction or condition?

Mr. SUTHERLAND. It does the licensee no good whatever.

Mr. BURTON. In this case it costs him $470,000.

Mr. SUTHERLAND. But the power of the Government, as I understand, is to preserve the navigability of the stream.

Mr. BURTON. Yes.

Mr. SUTHERLAND. When any citizen undertakes to interfere with the stream, the power of the Government is to see that the conditions are such that he does not interfere with the navigability of that stream. When the Government has imposed that condition and has required the construction of the dam or other structure in such a way that navigability is preserved, its power has ended. As I understand, it has not any power to do anything except either affirmatively to improve the navigability of the stream or negatively to prevent the destruction of its navigability.

Mr. THOMAS. Or injury to it.

Mr. SUTHERLAND. Yes. Having done that, its constitutional power has ended; and it has no business to say, in addition to the condition that the navigability shall not be interfered with or injured or destroyed, that as a consideration for its permission to construct the dam in a certain way it shall pay the Government a certain amount.

Mr. BURTON. Suppose the Government, instead of asking these parties to do this, had said, "We will build the lock, and we will charge you $470,000 for it." Would that have been a proper exercise of Federal power?

Mr. SUTHERLAND. I will ask the Senator to repeat that question. I did not quite catch it.

Mr. BURTON. Suppose the Government, instead of imposing upon this licensee the obligation of building the lock, had concluded to build the lock itself and had said to the licensee, "We will let you put in the dam there, but we will charge you $470,000 for the privilege." Would that have been an illegal exercise of power?

Mr. SUTHERLAND. Does the Senator mean the Government should say, "Instead of permitting you to build it, we will build it for you and we will charge you what it costs"?

Mr. BURTON. It is not building it for them at all. It is of no interest to them. It is of interest only to the Government.

Mr. SUTHERLAND. It is building it for them, because the Government has imposed the condition upon them that it shall be built in order to preserve the rights of the Government.

Mr. BURTON. Suppose $470,000 is estimated as the cost of the lock. The Government says we are going to build it and charge you $470,000 for it. Would that be an illegal requirement?

Mr. SUTHERLAND. That is the cost of what the Government has done.

Mr. BURTON. The cost of what the Government is going to do—could that be charged as a condition for the privilege of building the dam?

Mr. SUTHERLAND. And what the Government has done inures to the benefit of the private company, because, if the Government were not to do it, the private individual would be compelled to do it.

Mr. BURTON. The private individual would not be compelled to do it at all except to promote navigation there and furnish a way of getting through.

Mr. SUTHERLAND. The Government of the United States imposes this condition in order to preserve the navigability of the stream.

Mr. BURTON. Let me ask the Senator from Utah another question. Suppose the stream has to be improved above and below this dam and can not be made navigable except by dredging. This licensee comes and seeks a very valuable privilege there. Does the Senator from Utah maintain that the Government would be debarred from imposing upon that licensee the duty of improving the river both above and below the dam to make it navigable?

Mr. SUTHERLAND. The Senator from Utah simply says that the only power of the Government in connection with a matter of that kind is to insist that the structures in navigable streams shall be constructed in such a way as not to interfere with or destroy or injure navigability. If what the Senator from Ohio now suggests to be done is necessary for that purpose it may be required.

Mr. BURTON. Suppose it has no connection whatever with the construction of the dam, but there is a place both above and below, and we want to make it navigable, could the Government impose no condition so that the licensees must make a contribution to improve the approaches to that dam?

Mr. SUTHERLAND. Would the Senator add to that that the erection of the dam has imposed an obstruction and in part destroyed the navigability?

Mr. BURTON. This is not that case. There, I think, is the fundamental error of the Senator from Utah. It is not an error, but we do not exactly understand each other. This is not preventing obstruction to navigation. It is creating navigation. Here are considerable rapids over which you can not go unless there is a means of passing from a higher to a lower level and from a lower and higher level as well. Some one observes a very valuable water power there. The Government says to him: "We will impose on you as a condition of enjoying it that you help out in the improvement of the navigation of that river."

Mr. SUTHERLAND. Does the Senator mean to impose a tax to help the navigability of the river in a way that has not been affected by the structure which the company puts up for its own purposes?

Mr. BURTON. You can not separate that structure from the rest of the stream, because it creates an integral part of the navigation of the whole river.

Mr. SUTHERLAND. If the Senator will permit me, that, to my mind, is the whole question. If the construction of the dam interferes in any way with the navigability of the river, the Government of the United States may require the private company as a condition to putting up a dam to construct other works, if they are necessary, to restore the navigable condition. But if the improvement of the navigation of the river had no connection with the building of the dam, then it seems to me that the Government would have no right to do it. In other words, if the Senator will bear with me——

Mr. BURTON. Certainly.

Mr. SUTHERLAND. The Government of the United States would have no right to say to this company, "Because we grant you the privilege to build a dam at this point as a condition for that you shall go up the stream and remove obstructions to navigation which are in no manner affected by the dam which we give you permission to construct." The two must bear relation to each other.

Mr. BURTON. In other words, this is the contention. A corporation comes along with a proposal for improvement in that locality, and we say to them we shall not impose any obligation on you whatever except the mere creation of structures, although the privilege is of great value. That would lead to a system of favoritism and the loss to the public of valuable rights. What does the Senator from Utah say to this, which I mentioned a little while ago? When a bridge is built across a navigable stream and troops and munitions of war of the United States must be carried over that bridge. What does that have to do with constructing it?

Mr. SUTHERLAND. It has nothing to do with the stream.

Mr. BURTON. Does the Senator maintain that such a restriction is not valid?

Mr. SUTHERLAND. I will say frankly that I have never given any thought to the precise case to which the Senator refers.

Mr. BURTON. If that is not a valid restriction, then Congress has sinned very many times; but I think it has sinned in the line of doing something for the promotion of the public good.

Mr. SUTHERLAND. I will say to the Senator, without concluding myself upon the question, I would doubt very much whether the Government of the United States in authorizing the building of a bridge, simply that it may be built in such a way as not to interfere with navigation, could impose a condition such as the Senator suggests. I am not familiar with the legislation to which the Senator calls attention.

Mr. BURTON. The important point on which the Senator from Utah and myself differ is on the right to impose conditions in such a case as that, and what may be the nature of those conditions. I maintain the absolute right exists in such a case to impose conditions in the interest of the general welfare. That is the very price of all franchises, and we are imposing it every day.

When a privilege is exercised we may regulate the charges as we have done in regard to bridges across navigable streams, and we can compel them to share with other corporations the right to go across. Such a valuable privilege should not be given away, nor should these water powers of such enormous value to the country be granted without any quid pro quo.

Now, I want to dwell somewhat further on what was said by the Senator from Alabama [Mr. BANKHEAD].

Mr. SUTHERLAND. Will the Senator indulge me in one remark?

Mr. BURTON. Certainly.

Mr. SUTHERLAND. The powers to which the Senator calls attention are not powers controlled by or owned by the Government of the United States. That is a species of property wholly controlled by the State. The Government of the United States, therefore, in granting a right to build the dam does not grant the right to create a power; it simply permits the construction of a dam and keeps the control of that subject wholly with reference to its power over navigation and not at all with reference to the creation of a property right by the erection of the dam.

Mr. BURTON. Of course, the two go inseparably together. The Government of the United States has taken a large responsibility in the way of improving that river. I have forgotten the exact amount which it has expended; I think, perhaps, some $600,000. Here is this privilege. Those who are seeking it are willing, and indeed anxious, to accept on the terms proposed.

Mr. THOMAS. May I ask the Senator a question there?

Mr. BURTON. I yield to the Senator from Colorado.

Mr. THOMAS. Is it not a fact that the Connecticut River Co. in making application to Congress for the right which is embodied in the bill is practically using or expecting to use the Government's power to control navigation merely as an incident to an enterprise the principal object of which is to generate power for commercial purposes?

Mr. BURTON. The action of Congress is based on navigability. The aim of the company is to develop water power. The two are coordinate. One may have one object and another may have another object. Our object is to extend the navigation of the Connecticut River past those rapids at Springfield and Holyoke, a thing we have been asked to do for, lo, these 20 years, and we have not felt that we could afford the expenditure. The object here is to bring about that result, and, in bringing it about, to utilize the water.

Mr. THOMAS. But the Senator has said that this company is not only anxious but eager to submit to the conditions of the bill. It must be true, therefore, that the company is seeking to utilize the power of the Government over navigation merely as an agency to enable it to obtain a very valuable property right.

Mr. BURTON. I would not say that. I would say that this company has already certain riparian lands and it has been seeking to develop navigation and power. They wish still further to develop that power, but as a condition they must obtain the consent of the Federal Government. I do not see how they are seeking to utilize Federal power in the matter. They are coming here and ask permission to be given that without which they can do nothing. I think that differs quite materially from the statement as made by the Senator from Colorado.

A moment ago I was talking, Mr. President, about the Black Warrior bill. The first one was introduced in the Senate April 13, 1911, and it had the provision that the company shall pay to the Government a rental of $1 per annum, and beginning with the year 1920 shall pay to the Government an additional rental or royalty of 50 cents per horsepower. They are also compelled to obtain flowage rights. This case here is distinguished from the other in principle, because they are compelled not only to pay the money but they are compelled to acquire a part of that which the Government would acquire, namely, the flowage rights.

This bill was reported on the 19th of June, 1911, by the Senator from Minnesota [Mr. NELSON] with all these provisions in it for compensation. Later the Senator from Alabama [Mr. JOHNSTON] introduced an amendment in which he included provision for flowage rights. This bill passed the Senate the 24th of July, 1911, containing all these provisions for compensation. It went to the House and was very materially changed by the Committee on Rivers and Harbors, but the provision for compensation was still retained. Then on the passage of the bill still further conditions were inserted.

Mr. President, there is another bill, one pertaining to the Ragland Water Power Co.—or, to be exact, a part of a river and harbor bill—which, it seems to me, comes very near to the principle enunciated in this bill. The Senator from Alabama, if I recollect aright, introduced the amendment providing for this item. It relates to Dam No. 4 in the Coosa River. The company contracts to complete the dam. Bear in mind what this is. At Lock No. 4 in the Coosa River there was an uncompleted dam, and this company came here and desired the privilege of improving that locality and developing water power. What difference is there in principle between constructing half a dam and constructing the whole of it?

In the very bill which the Senator from Alabama introduced the company contracts to complete the dam, furnish all materials and labor, and convey the same to the Federal Government free of cost, claims, or any charges whatsoever—that is, an incomplete dam was to be finished.

They agreed to complete the work within three years.

To fully safeguard the interests of navigation, under such provisions for the operation of the dam and lock as the Secretary of War may prescribe.

To furnish to the United States free of cost electric current for operating and lighting the property.

To execute a bond for the faithful fulfillment of the contract.

To pay the cost of Government inspection.

To submit to any change in the specifications that the Secretary of War may make.

Here is another agreement that is a part of the construction:

To raise the height of the dam 3 feet and stop all leaks in the Government work already constructed.

To pay all damages to riparian owners for flowage rights.

To pay $1 per 10-hour horsepower year for the power due to natural flowage.

To pay from $1 to $3 for each 10-hour horsepower year produced by storage.

The Secretary of War may in his discretion readjust rates of compensation at periods of 10 years.

Having submitted to all these conditions, the company get the 50-year franchise, expressly subject to amendment or revocation, with no provision for compensation for the property.

Mr. President, the conditions here altogether surpass those in this Connecticut River bill. They are on the same plane, because in this very measure which the Senator from Alabama presented the obligation is imposed upon the licensee to finish the dam, stop all leaks in it, erect flashboards, and raise the height 3 feet. What is the difference between that and the original privilege? It is very much more severe in comparison with the franchise in this pending measure. The licensee in the Alabama bill like one who having been knocked down and kicked and cuffed around, is compelled to pay and then fight for the privilege of being thrown out of the window.

I will not repeat in full what I said day before yesterday, but I will again refer to the document to be printed herewith giving the three classes of permits under which private parties have used water. First, where the Government has already built a dam and afterwards leases it. Second, where the Government contemplates itself building a dam and makes provision for charge or compensation. Our recent river and harbor bills, beginning with 1909, including the provisions for a survey of a 14-foot waterway, provide that a report shall be made as to what will be fair in the way of compensation. In this very Connecticut case the report was made that there should be certain compensation to the Government in case structures producing water power should be built.

The third class is the one under which this bill is introduced, where the privilege to construct the lock and dam or the dam is given with conditions attached. We have passed a number of those statutes imposing all sorts of conditions. There is hardly a Senator here who has not been on the floor when bills like this one have been passed, in which the most stringent conditions are imposed in granting the right to develop water power in navigable streams.

Mr. BANKHEAD. Mr. President——

The PRESIDING OFFICER (Mr. O'GORMAN in the chair). Does the Senator from Ohio yield to the Senator from Alabama?

Mr. BURTON. Yes; I yield.

Mr. BANKHEAD. Can the Senator from Ohio cite us to a single bill on all fours with this where the riparian owner constructs the dam and pays all the expenses necessary to provide for navigation? Can the Senator point to a single bill where anything is imposed except merely to operate the lock?

Mr. BURTON. There has been no case in which there has been so specific a statement as this of the amount paid.

Mr. BANKHEAD. I am not talking about specific amounts. I am asking the Senator if he can point to a single act upon the statute book on all fours with this, where the corporation built the lock and dam at its own expense, and where they own the site, and any charge has been imposed except such as is necessary to operate the lock. That is my question.

Mr. BURTON. The Coosa Dam act provided that the licensee should finish the dam and pay a fee besides.

Mr. BANKHEAD. The Government there is the owner, and it built and nearly completed it. It lacked only a little of completing it.

Mr. BURTON. I argued that at great length earlier in the discussion. There is no difference in principle in any of those impositions—the building of a dam, the building of a lock, the furnishing of power—from that involved in this case. They all rest on one principle, the right of the Government, when it is improving navigation and finds valuable water power, to impose conditions upon the one who is granted the privilege.

Mr. BANKHEAD. That is where we part company. There is where we differ.

Mr. BURTON. Mr. President, I am conscious that I have detained the Senate longer than I had intended and necessarily have repeated the same material, but I wish to make some general remarks on the subject of conservation. We have vast potential water power that has been withheld from utilization for years past which would have been utilized if the policy embodied in this bill were adopted.

It has already been adopted in the case of Hale's bar below Chattanooga and in a half dozen other cases. It is not fair to the people of this country to ask them to improve a river where the improvement would be as expensive as that of the Connecticut and allow a water-power right there which is inseparably connected with the obstacle to navigation to go to a private individual corporation without contributing to that expense. It is especially not the right course for us to pursue when the parties appear and are willing to submit to all these conditions and the whole neighborhood is anxious to have the work done in the manner proposed.

Conservation does not mean reservation. It never did mean permanent reservation, at least in the minds of its more judicious advocates. It does mean, however, that the resources of the country, its great natural wealth, shall neither be wasted nor shall they fall into the hands of a favored few. It means that such policies should be adopted that the public domain and all its varied treasures shall be so utilized as to secure the maximum of benefit and at the same time afford the maximum equality of opportunity. It recognizes that in the past we have made serious errors in granting lands and in allowing concentrated ownership in the hands of agressive exploiters.

All this is but a part of the haste in development which is characteristic of American life and which has resulted from a lack of foresight. Neither Congress nor the executive department has fully realized the rapidity with which the possessions which are necessary for the very life of the people have been exhausted. Conservation does not mean that we of the present should be debarred from the enjoyment of the wealth which belongs to us, nor does it seek, as was stated by the deceased Senator from Colorado, Mr. Hughes, to make "mollycoddles" of those who come after us.

The experience of past ages has shown that as one class of materials is exhausted invention and new discoveries will supply substitutes. This has been true of the partial substitution of iron and steel for wood in construction, of coal for wood for domestic purposes, and may be true in the future in the substitution of concrete for iron and other material. The future generations, in the realization of objects which minister to the necessities and conveniences of life, must solve its problems as well as the present, and must face its difficulties in appropriating the forces of nature and the treasures of the earth. The policy both of President Roosevelt and President Taft, and in a less degree of their predecessors, was to reserve certain portions of the public domain. This was not with a view to their indefinite withdrawal, but was prompted by the desire to prevent land grabbers and the so-called "timber thieves" from gaining an undue share of the public lands or public property. This policy was especially prompted by a desire to keep in abeyance the distribution of the remaining portions of the public domain until Congress shall have adopted a comprehensive, rational, and just policy for the utilization of natural resources. Such a policy should place no obstacle in the way of continued development of the country, but should secure with the utmost pains the prevention of monopoly and the repression of all efforts of the strong or unscrupulous to obtain an advantage over others.

Water power, a resource of enormous value, is running to waste. I gave some figures on this subject——

Mr. CLARK of Wyoming. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Wyoming?

Mr. BURTON. With pleasure.

Mr. CLARK of Wyoming. I should like to ask the Senator from Ohio what is the significance of the remark that water power is running to waste?

Mr. BURTON. Because so large a share of it is not utilized.

Mr. CLARK of Wyoming. But does the Senator mean that water power is wasted because it is not used to-day?

Mr. BURTON. I am referring, Mr. President, to the present use. That will appear as I go on.

Over 30,000,000 primary horsepower, it is estimated, can be developed in the streams of this country. The amount already utilized is about five million and a half. The total aggregate of horsepower, generated by all kinds of prime movers, now utilized in the country is about 26,000,000, of which five and a half million is water power, and the balance chiefly steam power. There are mined 500,000,000 tons of coal annually, and a very large share of this amount might either be saved or utilized for other purposes if the water power of the country could be utilized in a proper manner.

Unlike timber or material, it is not exhaustible, but will last for all time. With more perfect means for development and utilization it will show increased efficiency and become of far greater value. If the aim of conservation, in so far as it seeks to prevent waste, does not fully apply here, the prevention of monopoly and the prevention or adequate regulation of con-

centrated ownership does apply with unusual force. It is of the utmost importance that the benefits of its utilization should not be regarded as the prerogative of an individual or of a corporation, not of a community or even of a sovereign State, but of a nation of nearly 100,000,000 people, whose reliance upon it in the future must be greatly increased. The problem is thus a national one. Modern progress has already made it possible to distribute electrical power from one source over an area of 125,000 square miles, an area greater than that of any of the States of the Union except three—Texas, California, and Montana. In saying all this it is not meant to convey the impression that the States are not to have very large powers in disposing of and regulating the use of water power, but by reason of the wide area over which this power may be transmitted and used the national scope of the problem becomes apparent. Like all enterprises which become interstate in character, the powers of the States may prove insufficient and control may eventually be left to the Federal Government. This is especially true when, as in the present case, the use of the power is inseparably bound up with the development of navigation. In the building of locks and dams for navigation there can be no separate control of water power without confusion and the insuperable difficulties which result from a divided control of that which should be inseparable.

Mr. President, I have sought to establish the following propositions, though, in view of the questions asked, there have been many digressions:

First, that whenever an improvement is made which promotes navigation and in such improvement, whether by locks or dams or otherwise, a water power is created, that water power is an incident to the principal fact, and it belongs to the State or Government which seeks to promote navigation. Second, that as a matter of public policy there should, in the language of the Supreme Court, be no divided empire between the two; they are inseparably bound together. The coordination of the two makes possible the development both of navigation and of water power, which otherwise would be unprofitable and in fact wasteful. Third, that contrary to the statement in the minority report, the settled policy of Congress as well as of the executive department for now nearly a quarter of a century has been to dispose of such water power, whether created by works already constructed or to be created by works owned by the Government thereafter to be constructed, or, in the third place, when created by works constructed by private companies which undertake an improvement in a navigable stream under a grant of Congress.

The right of the Government to collect compensation depends upon the fact that it has the responsibility for the improvement of navigable streams, and in carrying out plans of such improvements it may employ all means which are plainly adapted to that end and are consistent with the spirit of the Constitution.

Right in that connection I want to say that I think the proposition ought to be accepted that if the Government can go into the Connecticut River, build a dam, create water power, and sell the surplus, you can not deny that it may say, in the exercise of the right to regulate commerce and delegate that power to others, "we will give that right to construct those dams to another, and the profit which we might have derived from the building of that dam shall still remain with us, although another constructs the work."

Conditions requiring construction of dams, or of dams and locks, the acquisition of flowage rights, the furnishing of electrical power, the payment of an annual charge for the value of water power, either established by congressional enactment or left to the discretion of the Secretary of War, have been the invariable rule, without a single objection being raised in the courts.

The circumstances of this particular case are exceptional in that the proposed improvement not only extends navigation in a river where already there is a large and growing traffic, but in that the improvement is located in a busy industrial section where power can be immediately utilized to great commercial advantage. If there is any case which has come before us in which the imposition of conditions would be reasonable, it is here. It should again be noted that in this case the Federal Government is not confronted by any opposition or unwillingness either on the part of those who propose to make the improvement or those who will pay for the service.

Mr. President, I want to make a suggestion right here. Suppose you are to make it a rule that under no circumstances shall any amount be paid by one of these companies after it has developed water—that all conditions must be finished when you merely require the building of the dams and locks. Now, let us see how great the injustice would be. There might be water power in a part of the country where there was no market for its product whatever, where the mere imposition of the obligation to build a dam would be a very severe requirement. On the other hand, there might be a case, as this is, right in the midst of a busy industrial section, where the person who utilized the power could well afford to build a dam and lock, buy flowage rights, and pay a large amount besides. If you want to enforce any hard and fast rule here, just see where you would land. You would have to treat all such cases virtually alike, at least up to the finishing of the structure; you could make no distinction between a very profitable franchise and one which has little or no value. The result would be that not only the general public would suffer, but there would be very serious obstacles in the way of development.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Utah?

Mr. BURTON. I do.

Mr. SUTHERLAND. Is not the Senator from Ohio overlooking the power of the State in the matter? The State would have the authority to step in and exact, through taxation or otherwise, proper charges. Such a company would be a public-utility corporation, and the State would have the right to regulate its charges.

Mr. BURTON. In that case, however, you would have as great a variety of regulations as there are States—forty-eight. Then, again, as I have already stated, the sufficient answer to that is that this is a privilege which is granted by the National Government. The National Government, which represents the whole people and which is improving the channels of rivers for the purpose of promoting navigation, in improving those rivers ought to be fair toward all localities, not paying from general taxation for an improvement that is unduly expensive in one region and giving away a right that goes with it for nothing. That is what it would lead to.

I want to say in this connection, Mr. President, that while I was connected with the Rivers and Harbors Committee of the other House I knew of cases where the building of locks and dams was advocated under the guise of improving navigation, when the real object, after the dam had been constructed, was to obtain water power. It was not merely conjecture; but it is a fact that persons made use of agitation among commercial bodies and others, who came here and advocated improvements of the most expensive nature in rivers, saying, "We want water communication," when what they really desired was water power.

On the other hand, there is the greatest earnestness on the part of all those in the locality to have this improvement made on the terms proposed in this bill, and no theoretical objection, no possible fear of establishing a precedent should be allowed to defeat the plainly expressed desire of the people of Connecticut and Massachusetts, who so manifestly wish that this bill should pass. It is necessary, Senators, that we should look at this matter from a broad national standpoint. The doctrine of State rights should be a shield, not a sword; we should not stand in the way of the development of the country. We must recognize that States and communities can not control this problem as well as the National Government.

I do not say that of every case. I do say this, however, if I may digress just a moment, that there is no line of industrial activity in which there are so many reasons for consolidation as in the case of the production of water power; and in the future I think this is inevitable. In the first place, a single water power may supply a very large area. In the next place, in one part of the country, in one watershed, the supply may be abundant at one time but slack at another time, and it is very desirable that they should tie up plants located on different watersheds so that one may aid and, as it were, piece out the other. Again, there is no business in which the advantages of economies can be better secured than in the case of the development and utilization of water power. So probably more and more these different water-power sites will be utilized together. I should look with the utmost apprehension upon their control by any one great corporation or organization or, indeed, upon consolidation in any form, unless the most careful regulation went with it. By reason, first, of the fact that in some instances a single water power will supply more than one State, and, second, that the advantages and economies of combination are so great—for these two reasons the national control is likely to be more and more asserted. The problem is assuming greater proportions than ever before, and in the future water power must be one of the chief assets not of any particular locality but of the Nation. I appeal to the Senators to pass this bill in the form in which it has been introduced by the Senator from Connecticut [Mr. BRANDEGEE].

Mr. THORNTON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Louisiana?

Mr. BURTON. I do.

Mr. THORNTON. Before the Senator from Ohio takes his seat I wish to ask a question that I would not ask before, because I did not wish to interrupot his argument, in spite of his well-known willingness to submit to interruptions. Twice during his argument he said that the grantee in this case was perfectly willing to accept the conditions imposed by the grantor, which is the Government of the United States. The inference that I drew from that was that that being the case, the Senate should not object. Does the Senator from Ohio take the position that because the grantee—the corporation—is perfectly willing and anxious, even, to accept a condition imposed by the Government, a Senator who should believe that the Government in imposing such condition is transcending its powers or possibly usurping the powers that belong to the State should not object to the passage of the bill?

Mr. BURTON. Oh, no; by no means. I presume I did not make myself altogether clear to the Senator from Louisiana. Of course, the franchise they would have liked would not have contained the conditions this contains; but after long consultation they have consented to this, and they are now anxious to have it carried through.

Mr. THORNTON. Yes; Mr. President, I thoroughly understand that the corporation is anxious; but the question I asked was, Does the Senator say that because of that reason a Senator should not object?

Mr. BURTON. Oh, no; not at all. It is because the people who are in the locality desire it most earnestly; and this corporation has been found, which is willing to carry on the work.

Mr. BANKHEAD. I should like to ask the Senator a question along that line.

Mr. BURTON. Very well.

Mr. BANKHEAD. I should like to ask the Senator if it is not a fact that when that corporation came here to seek this franchise they were told, "Unless you accept this provision your bill will be vetoed"?

Mr. BURTON. I do not know what was stated to them, but I presume that is a fact.

Mr. BANKHEAD. There is no doubt about that being the fact.

Mr. BURTON. Perhaps there was something in the form of a prior veto of a bill relative to the Coosa River.

Mr. BANKHEAD. Now, Mr. President, I desire to ask the Secretary to read a short paragraph from the report——

Mr. BURTON. From what page does the Senator ask the Secretary to read?

Mr. BANKHEAD. From page 86 of the final report of the National Waterways Commission, signed by the Senator from Ohio as chairman. It is interesting reading in connection with this discussion. I ask the Secretary to read the portion I have marked.

The PRESIDING OFFICER. In the absence of objection, the Secretary will read as requested.

The Secretary read as follows:

> The commission is of the opinion that the Federal Government has no proprietary right or interest in navigable waters which would authorize the collection of tolls. The right, if it exists at all, rests upon either the second or third theory stated. As regards the second theory, it should be said that the imposition of tolls, unless based upon a more substantial foundation than the mere authority to grant or withhold consent—an authority arising solely from the control of the Federal Government for the purposes of navigation—does not commend itself to the commission, and it is to be doubted whether, even in case a bill should be passed or other action taken by Congress for granting this permission, with a provision for charging tolls, such tolls could be collected. Regarding the third theory stated, it should be noted that under the exercise of the taxing power Congress can levy taxes for general revenue purposes upon all classes of water power, whether in navigable or nonnavigable streams, and if charges are to be imposed it would seem that this is the normal method. It should further be borne in mind that a requirement for the imposition of tolls where the right to construct dams is hereafter granted would cause a discrimination between water power to be utilized under future permits and those already enjoyed, which are subject to no such charge. It must, of course, be remembered that whenever the privilege of constructing dams is granted in a navigable stream there is an undoubted right to impose charges sufficient to pay the expenses of examination and supervision and to secure the Government against cost by reason of obstacles to navigation created by the erection of dams; but this rests upon an entirely different principle from the proposal to charge tolls.

Mr. BURTON. I do not deny, Mr. President, that I have in some degree changed my mind during the last three years about this matter. I was chairman of that commission, and the magnitude of this problem in connection with the proper method of utilization has very much grown upon me since that report was signed. It should be borne in mind that the whole report should be taken together.

Mr. CLARK of Wyoming. Mr. President, before the Senator from Ohio finally concludes, he has given such a clear statement of his views upon the matter that I hesitate to ask him any of the questions I have in mind, but I think they go to the foundation of this whole question.

Mr. BURTON. I will be very glad to answer the Senator, if I can.

Mr. CLARK of Wyoming. Of course, the Senator understands that the Senate is not now really considering the question of the Connecticut River Co., but the Senate is considering a proposition as to the relative rights of individuals, the States, and the General Government in this basic proposition. I want to ask the Senator, in his opinion, who, if anyone, owns the water in the Connecticut River?

Mr. BURTON. Is that the question?

Mr. CLARK of Wyoming. I have three questions which I desire to ask, that being the first. The second is, Who, if anyone, owns the land under the water in the Connecticut River? The third one is, Whether or not, if the Government can dispose of the power generated at this dam, it can use it for any purpose which it chooses? I will make a little further explanation of that. If the Government can dispose of this water for a fixed charge for the purpose of running a manufacturing plant, can the Government itself run a manufacturing plant; or, if the Government can dispose of this power to a company for the purpose of running a trolley line, can the Government itself also use that power for running a trolley line? Those are the questions upon which I want to get the views of the Senator.

Mr. BURTON. Mr. President, I have already dealt at considerable length upon the first two of those questions. Who owns the water? It is not the property of anyone. We say in a vague way it is the property of the public; but, save for three rights, it is as free as light or air.

Mr. BORAH. Mr. President——

Mr. BURTON. The first right is the right of the owner of the bed of the stream——

Mr. CLARK of Wyoming. If the Senator will pardon me just a moment, I want to say to him that my purpose in asking these questions and getting his views is that they might perhaps form the basis of future discussion upon this or other bills.

Mr. BORAH. Mr. President——

Mr. BURTON. If the Senator from Idaho will kindly let me answer these questions I will yield to him later. The right of the owner to the bed of the stream is not an unqualified right. In some States it belongs to the State; in others the abutting proprietor owns to the center of the stream; sometimes his property is bounded by the low-water mark and sometimes by the high-water mark.

Now, if the bed of the stream belongs to the State, it must be utilized for a public purpose. I think there is a considerable difference in the States as to just what right inheres in the ownership of the bed of the stream. I should question whether in any State it went as far as a fee-simple right, so that the Commonwealth could sell it out to a private individual for such purposes as that individual desired to use it—to part with the title, and thereby deprive the public of the use of it.

The second right in that water, which is a qualification of its free use, is the riparian right in its flow, which involves its reasonable beneficial use, provided it does not interfere with the rights of riparians above or below. The third right is that of navigation, the control of which belongs to the Government of the United States, and is a right paramount to all. In the Western States there is a very different rule in regard to water. I am only speaking of the Eastern States. The Senator from Wyoming is no doubt very much better informed with respect to the conditions in the Western States than I am. There different conditions arising from the business of mining and the demands of agriculture necessarily make water a much more valuable asset than it is here in the East, and, in fact, generally speaking, the supply in the West is much scarcer than it is in the East.

As to surplus water available for power, can the Government use it for its own purposes? Why, yes; if it is for the carrying on of any public purpose and is connected with navigation. For instance, if there should be an armory or an arsenal where power was required, and there should be a Government work constructed there for the sake of navigation, and surplus power was created, I have no doubt that that water could be used for turning the lathes in that armory or arsenal; but, as a general proposition, I should say "no." If the Government is operating a trolley to carry its men from one portion of a navy yard or one portion of a camp to another, surplus water power above

that required for navigation could be applied as a propelling power for that purpose.

Mr. CLARK of Wyoming. I think probably there is no question about that in either the Senator's mind or in my own.

Mr. BURTON. I was going to say one thing further a little in the line of the question asked by the Senator from Colorado [Mr. THOMAS] a few days ago. If there is surplus water in a navigable stream and a plant is erected to utilize that surplus water for running locks, and there is more than is required for running the locks, I am inclined to think the Government could dispose of the surplus.

Mr. CLARK of Wyoming. Of course, my question was—and it seems to me as though the greater would involve the less—if the Government has authority for hire to dispose of, as under the terms of this bill, the power that is generated, could it itself use it along the same lines in which it is used by the lessee or the grantee?

Mr. BURTON. Maybe it could. It could sell the surplus water. The Senator's question is, Could it build a hydroelectric plant and sell the power?

Mr. CLARK of Wyoming. Exactly so. That is my question.

Mr. SMITH of Arizona. Or hitch it to machinery and sell the product of a factory?

Mr. BURTON. That is a different thing; that goes further. I never like to express an opinion on a question of this kind.

Mr. CLARK of Wyoming. I was seeking to find out just where the Senator's most clear and logical argument might lead us.

Mr. BURTON. I would be inclined not to favor any proposition that went that far; but the question of whether in their ownership of surplus power, the Government can not devise means to dispose of that surplus power in a profitable manner is a different matter.

Mr. NEWLANDS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Nevada?

Mr. BURTON. I believe the Senator from Idaho [Mr. BORAH] first rose.

Mr. BORAH. I was not desirous of interrupting the Senator; I thought the Senator had concluded; and I had some matters of legislation I wanted to bring up.

Mr. NEWLANDS. I wish to ask the Senator from Ohio whether he regards the dam which the grantee in this case proposes to erect as a structure belonging to navigation?

Mr. BURTON. I should say it was a structure erected in aid of navigation; yes.

Mr. NEWLANDS. It is a structure that the Nation itself could build in aid of interstate commerce?

Mr. BURTON. Yes.

Mr. NEWLANDS. And it is a structure the use of which for other purposes the Nation, if it constructed it, could turn over to others for a consideration, is it not?

Mr. BURTON. Well, that would depend somewhat on the purpose to which it was to be applied.

Mr. NEWLANDS. Very well, take this case: If this structure, created in aid of navigation, is capable of a use which will result in the development of water power, can the United States Government, as a means of lessening the cost of that navigation, get profit from that use?

Mr. BURTON. I would say it could get an income from the surplus power. I do not know that I understood the question of the Senator from Nevada. I understood him to ask if it could sell the structure of the dam.

Mr. NEWLANDS. I will state very briefly, then, my contention, which is entirely in harmony, I believe, with that of the Senator from Ohio; but I have not been here this afternoon and have not had the advantage of the Senator's argument. As I understand, the Senator's contention is that this dam is constructed in aid of navigation?

Mr. BURTON. Yes.

Mr. NEWLANDS. That is, the Nation itself, under the interstate commerce power, could construct it?

Mr. BURTON. Yes.

Mr. NEWLANDS. And that, having constructed it, it could allow that structure to be put to some other profitable use which would diminish, of course, to the Nation, the cost of the enterprise in aid of navigation?

Mr. BURTON. Not unless that other use was in conjunction with its use for navigation. For instance, if a dam and lock were constructed in a stream which it was intended to abandon for navigation, the Government would have the right to sell the structure, but it could not sell the right to utilize the water power with it. When the Federal purpose for which it was constructed ceases, then the incidental purpose of the development of water power would cease with it. The best illustration is the one I gave about the building of a market house, having an auditorium above it. When its use as a market house is abandoned the municipality was held not to have the right to maintain an auditorium.

Mr. NEWLANDS. Well, Mr. President, if the Senator has concluded his remarks, I should like to say a few words upon that subject.

Mr. BURTON. I am through.

Mr. NEWLANDS. Mr. President, my view of this matter, based simply upon a casual study of it, is that the structure in question may be regarded as a structure in aid of navigation, and therefore it can be erected by the National Government under the power to regulate commerce between the States. It is a dam which is intended to raise the height of the stream above the dam in such a way as to prevent the rapids from impeding navigation. The purpose is to create a pool behind this dam, through which ships and vessels can proceed to the upper reaches of the river, and for that purpose locks are put at the side of the dam, with a view to enabling vessels to be raised or lowered, as occasion may require, in order to go up or down the river.

The National Government has the right to make that structure for that purpose, and in making it it necessarily creates a head of water which can be put to a profitable use in the development of power.

Doubtless the National Government itself, having constructed this structure, can make use of that structure in such a way as to develop this power. It does not claim, necessarily, any property right in the water. That is an elusive thing, as elusive as air itself, slipping from the upper reaches of the river down into the lower reaches and thence into the sound. It therefore may possibly have no property right in the water, but it has a property right in the structure, and the passage of that water over or through the structure creates a power of which the National Government is necessarily the owner.

Being the owner of that power, the National Government can part with it; and it would be a wise thing for it to part with it in a profitable way, for by so doing it would diminish the cost of the structure for purposes of navigation, and thus make feasible a navigation enterprise which otherwise would be entirely unfeasible because of the cost.

Having that power, the National Government can select an agent for the execution of that power. It can select an agent and authorize that agent to do what it can do—obstruct the stream by a dam for the purposes of navigation and construct the locks essential to navigation. The agent will then be in the same position as the principal, in the possession of a dam useful for two purposes—the promotion of navigation and the development of water power.

If, then, the principal has the power to select an agent to create a structure which the principal can construct, and if the principal has the right to every profitable use of that structure if it constructs it itself, it can make terms with the agent with reference to the compensation which the principal shall receive for the exercise by the agent of a privilege which it could not exercise at all without the license of the principal, particularly when that compensation is to be expended in the regulation of the river itself, a regulation essential to navigation and power development.

So, Mr. President, this legislation does not involve in any degree the ownership of water. Water flowing in a stream is no more the subject of ownership than a bird flying in the air. Reduce the bird to possession and it is your property, but so long as it flies in the air it is not. So it is with the water; reduce it to absolute possession, put it in a pail, and it is yours; but so long as it flows from its source to the Sound, subject only to temporary artificial obstructions, it is not the property of anyone.

In this case the Government deals simply with the structure and the use of the structure; not with the water or the use of the water. Having the right to rear the structure, and having the right also to select an agent to rear that structure, it can in law attach any condition it chooses to the use by that agent of the structure which it creates.

Mr. President, this illustrates the kind of legislation with which the Congress of the United States has been amusing itself for a hundred years or more regarding our navigable rivers. I say "amusing itself," for our legislation has lacked effectiveness, lacked efficiency. We have been trifling with this great question of the development of our rivers, and we have been trifling while we have been engaging in the Senate and in the House in endless discussion over the respective powers, rights, and jurisdictions of the Nation and of the States.

The Connecticut River furnishes an illustration of the futility of our efforts to reach any comprehensive results. That river affects the interests of four or five States. Taking its source

in Vermont and New Hampshire, it proceeds through Massachusetts and Connecticut into Long Island Sound. It is useful for two purposes there only. It is probably not useful for irrigation, as our western streams are, because of the humidity of the climate.

It is not, perhaps, to be regulated as many of our southern rivers are, in the interest of the reclamation of our swamp lands. The uses which are to be regulated on that river are the uses of its waters for navigation and the development of water power. That river is subject to the jurisdiction of four State sovereignties and one national sovereignty, the jurisdiction of each being clear and distinct, but each of these sovereignties having an interest in the river. It never has occurred to Congress, apparently, so far as action is concerned, although many of us have been debating it for years, that it would be a wise thing for these sovereigns, each having an interest in this river, to get together, confer through representatives with each other, and agree upon comprehensive plans under which each sovereign can itself or through agents do the part that belongs to its jurisdiction, so that the works will dovetail into each other and thus bring about the highest efficiency of the river itself for every purpose of civilization.

Mr. CLARK of Wyoming. Mr. President, will the Senator permit a question?

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Wyoming?

Mr. NEWLANDS. I only want to speak for a few moments.

Mr. CLARK of Wyoming. Just at that point I wanted to ask a question of the Senator, but I will not do it if he prefers that I should not. It is right on that particular line.

Mr. NEWLANDS. I will answer the question, then.

Mr. CLARK of Wyoming. The Senator was speaking of an agreement between the States themselves and the General Government. I should like to ask the Senator if any agreement could be made that would add to or take from the rights which the States and the General Government would have before that agreement was entered into?

Mr. NEWLANDS. None whatever; and I was careful to say that these plans would involve simply the exercise of the jurisdiction that belongs to each sovereign, and that each would accomplish its work within its jurisdiction, but under plans that would enable their works to dovetail with each other in such a way as to create the highest efficiency of the river for the uses of civilization.

We have no ambassadors, no ministers plenipotentiary, which the Nation can send to the States in order to confer with them regarding matters of joint interest. But will it be contended for a moment that no machinery can be created by which the Nation can talk to the States and the States can talk to the Nation, and that no machinery can be created by which each will exercise its admitted jurisdiction in such a way as to benefit instead of injuring the other? That is what we require—that simple machinery, through a national board meeting with boards appointed by the respective States, and, with the aid of engineers and experts, formulating plans which will permit of the harmonious and complete and comprehensive development of the waterways of the country without impairing in any degree the jurisdiction or the powers of each sovereign.

The Senator from Ohio—and I am sorry he is not here—served with me some years ago on an inland waterway commission created by President Roosevelt in the exercise of his power of recommendation to Congress, without statutory authority. On that commission we served with men distinguished in engineering and otherwise, with a view to presenting a plan under which the Nation and the States could coordinate in this great work. We made a report covering every contention which I have made, and Congress turned aside from the report. A bill which I had reported from the Committee on Commerce embracing the essentials was sandbagged on the floor of the Senate by the representatives of both parties, two of those representatives being from the Southern States, the section which will be more developed by this method of treatment than any other section of the country. Ever since then some of us have been making strenuous efforts, in committee and upon the floor of the Senate, to have this simple process of accommodation between the sovereigns accomplished through legislation. Thus far our efforts have been unavailing.

It is often said that some of us are 10 years ahead of our time. The trouble is that Congress is 10 years behind the times. This is demonstrated by the action of every waterway convention that has met in the country of late years, by the declarations of commercial bodies throughout the country, all of which have declared for cooperation between the Nation and the States in this important work, and by the declarations of the political parties of the country, all of which in the last campaign and, I think, all of them in the preceding campaign have demanded most emphatically the cooperation and the coordination of the Nation and the States in these important works.

Mr. President, I referred to the action of the Inland Waterways Commission. I was impatient to end the work of that commission, because it was a commission of legislative deliberation, and I wished to substitute a commission of action. When that report was presented to Congress, what did it do? It organized another commission—not of action, but of deliberation—the National Waterways Commission, of which my friend the Senator from Ohio was the chairman. It sat for two or three years upon these questions, and finally presented findings almost identical with those established by the Inland Waterways Commission organized by President Roosevelt, and of which my friend the honored Senator from Alabama [Mr. BANKHEAD] was one of the members.

So we have been wasting years in deliberation, meanwhile permitting this old spoils system, this patronage system of developing our waterways, to continue, under which individual Senators and individual Congressmen have been accustomed to present to Congress projects for individual constructions and individual dredgings here and there, and then bear back to their constituencies the evidence of their triumphant efforts—triumphant only in inefficiency; triumphant only in the careless expenditure of public money without adequate plans.

Mr. President, this is another of these cases of sporadic legislation regarding our waterways. Fortunately, it can be commended much more highly than the individual and scattered projects that usually present themselves, for it is an intelligent conception regarding a river of rather limited length, and whose uses have been well ascertained. The problem has been well thought out. I am disposed to support this bill, not because I like these individual cases of legislation when we ought to engage in general legislation involving all the waterways of the country, but because I think it has a merit; because I do not think it means simply the prestige of the individual Congressman or the individual Senator; because I do not believe it is a part of the spoils system which has prevailed in this country in projects both on our rivers and in our public buildings, just as it has existed in office.

I should much prefer if in this bill we would organize a commission of engineers, and authorize that commission to meet with similar commissions from the States of Vermont, New Hampshire, Massachusetts, and Connecticut, and have them work out broad, comprehensive plans relating to the full development of this river for every useful purpose.

I would much prefer to have them come with such broad and comprehensive plans and indicate that this is the part which the National Government is called upon to do, and this is the part that corporations or individuals are called upon to do under the laws of Vermont or New Hampshire or Massachusetts or Connecticut, thus involving a great work of utilization of the entire river for every useful purpose.

Coming as it does, having merit as it has, I am disposed to sustain this bill. I make these few remarks only with a view to calling the attention of the Senate of the United States to the fact that all the political parties have demanded that we should take up the question of waterway development in a comprehensive way; that that involves the regulation of the flow of the rivers, reducing the crest of the flood, and raising the height of the ebb flow; it involves bank protection, levee building, storage for irrigation above, intermediate storage for the development of water power, the control of the waters so as to promote the reclamation of swamp lands, every process of arresting the flood waters of the rivers as they fall from the heavens, in such a way as that they shall not within a few days or a few weeks be precipitated upon the weakest portion and perhaps the richest portion of our country and devastate its cultivable area; it involves treating the river as a highway of commerce, with terminals, transfer sites, and facilities, and facilities for coordinating with railways. In this great work we should unite under comprehensive plans the functions and powers of every sovereignty affected, and thus establish team work in the place of this eternal contention over questions of jurisdiction and sovereignty. We can thus turn every river from an instrumentality of destruction into an instrumentality of benefaction and create in every section of the country the largest prosperity and wealth.

Mr. BRANDEGEE. Mr. President, I do not care to enter into any argument on the merits of this question at this late hour of the afternoon. As Senators know, the bill will be taken up under the unanimous-consent agreement next Tuesday, and then I may address the Senate briefly upon it. But some remarks have been made here this afternoon which lead me to put into the RECORD a short statement of what I claim is the constitutional authority of the Government to impose a con-

dition of a money nature upon the granting of a license to construct a dam.

Most of the questions that are being discussed, it seems to me, apply to other bills and other propositions. There are many questions of a speculative and a somewhat obscure nature concerning the physical ownership of water, the ownership of the tide lands in the different States, the uses that the water can be put to for the development of electrical power, what sort of property the power generated is, and whether the Government or the State has the right to sell it, which are interesting and must be solved at some time, either, as the Senator from Nevada [Mr. NEWLANDS] says, in a national policy of broad scope or by particular legislation.

I apprehend that the only part of this bill that will cause any serious discussion is the provision beginning at line 19 of page 2 of Senate bill 8033, as follows:

And provided further, That the Secretary of War, as a part of the conditions and stipulations referred to in said act, may, in his discretion, impose a reasonable annual charge or return, to be paid by the said corporation or its assigns to the United States, the proceeds thereof to be used for the development of navigation on the Connecticut River and the waters connected therewith.

Under the power to regulate commerce among the States, the Congress may, in my opinion, in consenting to the construction of a dam across a navigable stream, impose a condition that the licensee shall pay a reasonable sum of money to be used for the improvement of navigation, and it is not necessary that the money so paid should be expended at the immediate site of the dam. If the only power of Congress in the case of the Connecticut River dam is to require the licensee not to obstruct navigation, but to leave it in as good condition as formerly, Congress never could have required the licensee to construct a lock at Windsor Locks, because the river was not navigable at that point before the dam was built.

I do not care to discuss the question further. I have said that simply because, if I remember correctly, the Senator from Utah [Mr. SUTHERLAND], for whose legal judgment I have the highest respect, took the ground in answering the Senator from Ohio [Mr. BURTON] that possibly Congress could exact the money if it was to be spent in the improvement of navigation immediately at the site of the dam for which it was granting the license. I take the view that if it can provide, as a condition of issuing a license for a dam across a navigable river, that a lock must be built in aid of navigation and paid for by the licensee, it can equally consistently exact a money payment for the promotion of navigation under the clause of the Constitution which authorizes us to regulate commerce among the States; and I am quite certain that if it is expended anywhere on the river for the improvement of commerce among the States, as represented by river navigation, it would be sustained by the Supreme Court.

I will say further, Mr. President, if that question should ever be presented to the Supreme Court and my view of it should be declared to be not the correct one, very little damage would be done to anybody. I do not see how we are ever going to arrive at a solution of a question like this, which affects simply one part of the country and is of no interest to other parts of the country, unless it is to be made a precedent or a pattern for legislation of a similar character in particular States, to which they may object, or unless we pass something and let somebody, some stockholder, perhaps, refuse to pay the compensation provided for and take it to the Supreme Court and find out what we can do and what we can not do in these cases. Perhaps half the lawyers in the Senate think one way and the other half the other on this question; perhaps the court itself may divide; but we certainly can never arrive anywhere in the development of our water power, which is now running to waste all over the country, by having the Chief Executive veto all the bills that we pass which do not contain a provision for some sort of compensation and by having one House or the other block their passage if they do contain it.

After this bill has been properly discussed for as many days as Senators want to discuss it, I see no better way than to pass the bill and test that question. But when we get to the bill I am going to talk on the provisions of the bill as much as I can. While I have views on these interesting subjects that are discussed here—the general questions of water power throughout the country, which, as I said, are sometimes obscure and intricate—I hope after Senators have obtained all the information from each other on those very interesting subjects they will not allow the information so acquired to prejudice them against this particular bill unless it conflicts with some serious constitutional view which they may entertain.

SUPPLEMENTAL PATENTS TO ENTRYMEN.

Mr. GRONNA. I wish to call up Senate bill 6402, a measure that will take only a minute or two to pass and to which there can be no possible objection. I believe it will lead to no discussion. I ask the Senate to proceed to the consideration of the bill (S. 6402) to authorize the issuance of absolute and unqualified patents to public lands in certain cases.

The PRESIDING OFFICER. Is there objection to the request of the Senator from North Dakota?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It authorizes the Secretary of the Interior, in cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March 3, 1909, and June 22, 1910, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents to such entrymen, conveying to them the absolute and unqualified title to the lands so previously entered, patented, and thereafter classified as noncoal.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

INDIGENT PERSONS IN ALASKA.

Mr. SMITH of Michigan. From the Committee on Territories I report back the amendments of the House to the bill (S. 267) providing for assisting indigent persons, other than natives, in the District of Alaska, which were referred to that committee on May 9, 1912. I move that the Senate disagree to the amendments of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the Presiding Officer appointed Mr. NELSON, Mr. BURNHAM, and Mr. CHAMBERLAIN conferees on the part of the Senate.

DEPARTMENT OF LABOR.

Mr. BORAH. I ask unanimous consent to call up the bill (H. R. 22913) to create a department of labor.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Idaho?

Mr. PAGE. I should like to know what the bill is before I give my consent.

Mr. GALLINGER. I assume the Senator is not going to press the bill for consideration to-day.

Mr. BORAH. Not for final consideration. I wish, if I can, to dispose of the committee amendments to-day. I do not think there are any amendments which any Senator would care to discuss; they are mostly formal. I will not ask for a final vote to-day.

Mr. SMOOT. If there is any objection to an amendment, the Senator will ask to have it go over?

Mr. BORAH. I will.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered as in Committee of the Whole, and it was read.

The bill was reported from the Committee on Education and Labor with amendments in section 3, page 3, line 11, after the word "Immigration," where it occurs the second time, to insert "and Naturalization"; in line 12, after the word "Information," to insert "the Division of Naturalization"; and in line 24, after the words "Labor Statistics," to insert "and the administration of the act of May 30, 1908, granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," so as to make the section read:

SEC. 3. That the following-named officers, bureaus, divisions, and branches of the public service now and heretofore under the jurisdiction of the Department of Commerce and Labor, and all that pertains to the same, known as the Commissioner General of Immigration, the commissioners of immigration, the Bureau of Immigration and Naturalization, the Division of Information, the Division of Naturalization, and the Immigration Service at large, the Bureau of Labor, and the Commissioner of Labor, be, and the same hereby are, transferred from the Department of Commerce and Labor to the Department of Labor, and the same shall hereafter remain under the jurisdiction and supervision of the last-named department. The Bureau of Labor shall hereafter be known as the Bureau of Labor Statistics, and the Commissioner of the Bureau of Labor shall hereafter be known as the Commissioner of Labor Statistics; and all the powers and duties heretofore possessed by the Commissioner of Labor shall be retained and exercised by the Commissioner of Labor Statistics; and the administration of the act of May 30, 1908, granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment.

The amendments were agreed to.

Mr. BORAH. As that disposes of the committee amendments and it is late, and several Senators who are not here——

The PRESIDING OFFICER. The Senator from Idaho possibly overlooked that the bill specifies it shall go into effect October 1, 1912.

Mr. BORAH. At the proper time I will offer an amendment on that line.

Mr. SMOOT. I should like to ask the Senator if all the committee amendments have been disposed of?

Mr. BORAH. Those are all the amendments that I desire to have considered at this time.

Mr. SMOOT. I wish to have a little bill passed.

Mr. BORAH. In just a moment I will yield. I ask to have the bill reprinted with the committee amendments included.

The PRESIDING OFFICER. If there is no objection, it will be so ordered.

Mr. BORAH. I now ask that the bill be temporarily laid aside.

The PRESIDING OFFICER. It will be so ordered.

JOSEPH HODGES.

Mr. SMOOT. I ask unanimous consent for the present consideration of the bill (S. 7754) for the relief of Joseph Hodges.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Public Lands with an amendment, to add to the end of the bill the following proviso: "*Provided*, That upon the reconveyance of the surrendered lands they will become a part of the Cache National Forest," so as to make the bill read:

Be it enacted, etc., That the Secretary of the Interior is hereby authorized to issue a patent to Joseph Hodges for the following-described lands: The southwest quarter of the northeast quarter and the south half of the northwest quarter of section 29; the south half of the northeast quarter and the southeast quarter of the northwest quarter of section 30; the west half of the southeast quarter and the west half of the northeast quarter of section 15; the southwest quarter of the southeast quarter of section 10, all in township 13 north, range 5 east, of Salt Lake meridian, upon the transfer by the said Joseph Hodges to the United States of the northeast quarter of the southeast quarter of section 3; the southwest quarter of the southwest quarter of section 26; the southwest quarter of the southwest quarter of section 27; the south half of section 16, all in township 14 north, range 4 east, of Salt Lake meridian, situate in the Cache National Forest: *Provided*, That upon the reconveyance of the surrendered lands they will become a part of the Cache National Forest.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed a bill (H. R. 28499) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, in which it requested the concurrence of the Senate.

The message also announced that the House accepts the invitation of the Senate extended to the Speaker and Members of the House of Representatives to attend the exercises in commemoration of the life, character, and public services of the late JAMES S. SHERMAN, Vice President of the United States and President of the Senate, to be held in the Senate Chamber on Saturday, the 15th day of February next, at 12 o'clock noon.

HOUSE BILL REFERRED.

H. R. 28499. An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

Mr. SMOOT. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 20 minutes p. m.) the Senate adjourned until to-morrow, Saturday, February 8, 1913, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

FRIDAY, *February 7, 1913.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

We bless Thee, our Father in heaven, for this new day with all its hopes and promises. Thou hast created us for action and inspired us with high ideals. Illumine our minds and quicken within us the highest and best impulses, that we may add as individuals to our parts and strive to better the conditions of our fellow men; to the honor and glory of Thy holy name. Amen.

The Journal of the proceedings of yesterday was read and approved.

INDICTMENTS, NORTHERN DISTRICT OF TEXAS.

Mr. GARNER. Mr. Speaker, I call up a privileged resolution (H. Res. 808) which is on the House Calendar.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

House resolution 808.

Resolved, That the Attorney General of the United States be, and he is hereby, requested to transmit to the House of Representatives at the earliest practical date all letters, briefs of evidence, documents, and written opinions on file in the Department of Justice relating to or having any connection with the indictment returned in the United States District Court for the Northern District of Texas against C. N. Payne, John D. Archbold, Henry C. Folger, W. C. Teagle, A. C. Eble, E. R. Brown, John Sealy, Standard Oil Co. of New York, Standard Oil Co. of New Jersey, and Magnolia Petroleum Co. of Texas, charging them with conspiring to restrain interstate trade and commerce of the Pierce-Fordyce Oil Association in violation of the criminal provisions of the Sherman Act, or relating in any way to the order of the Attorney General of the United States directing the United States marshal for the southern district of New York not to execute bench warrants for the arrest of John D. Archbold, W. C. Teagle, and H. C. Folger, jr., issued on said indictment.

Mr. GARNER. Mr. Speaker, there are some committee amendments.

The SPEAKER. The Clerk will report the committee amendments.

The Clerk read as follows:

Page 1, line 2, strike out "requested" and insert "directed, if not incompatible with the public interest."

The amendment was agreed to.

Mr. GARNER. There are one or two other amendments.

The SPEAKER. The Clerk will report the amendments.

The Clerk read as follows:

Page 1, line 9, after the word "Folger," insert the word "junior."

The amendment was agreed to.

The Clerk read as follows:

Page 2, line 7, strike out the capital letter "H" and insert the word "Henry."

The amendment was agreed to.

Mr. MURDOCK. Mr. Speaker, I should like to ask the gentleman about the substitution of the word "request" for the word "direct." Is this the case where a Federal judge in Texas issued subpœnas for certain Standard Oil people in New York City and the Department of Justice refused to serve the warrants?

Mr. GARNER. It is. It was not a subpœna. It was a capias.

Mr. MURDOCK. Issued by the judge?

Mr. GARNER. Issued by the court on a grand jury indictment.

Mr. MURDOCK. Has any explanation ever been made by the Department of Justice why they did not serve these papers?

Mr. GARNER. The Department of Justice——

Mr. MURDOCK. I would like to ask the gentleman——

Mr. GARNER. I would like an opportunity to answer the gentleman's question.

Mr. MURDOCK. I will get at it in this way: The resolution as introduced into this House directed the Attorney General to explain to the House why these warrants were not served.

Mr. GARNER. When was that?

Mr. MURDOCK. As I understand it, that was it.

Mr. GARNER. No; this resolution——

Mr. MURDOCK. It must have been introduced, because the committee now brings in a resolution with an amendment changing the word "directed" to the word "requested."

Mr. GARNER. No; it is just the reverse of that, changing the word "requested" to "directed."

Mr. MURDOCK. So the resolution as it now stands is more mandatory than the original resolution?

Mr. GARNER. It certainly is.

Mr. MURDOCK. I am glad of that.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

PENSIONS.

Mr. RUSSELL. Mr. Speaker, I desire to call up the conference report on Senate bill 7160, an act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and to certain widows and dependent relatives of such soldiers and sailors.

The SPEAKER. The Clerk will read the report.

The Clerk read as follows:

CONFERENCE REPORT (NO. 1448).

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill S. 7160, an act granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and to certain widows and dependent relatives of such soldiers and sailors, having met, after full and free conference have agreed to rec-